Humanizing Warfare

The Sitou Timou Tumou Tou Philosophy and Armed Conflicts Around the World

BOYDO SARAGIH

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HUMANIZING WARFARE: THE SITOU TIMOU TUMOU TOU PHILOSOPHY AND ARMED CONFLICTS AROUND THE WORLD

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For every soul caught in the crossfire who still dares to believe that seeing humanity in the enemy is the only road home.And for those who will never hold this book, though peace belongs to them before it belongs to anyone else.

Preface

This book began as an undergraduate's restless question. I am a final-year law student at the Faculty of Law, Universitas Sam Ratulangi in Manado, North Sulawesi. My campus is far from the battlefields that dominate international headlines, but it is not far from the quiet emergencies that never make the news. Indonesia's eastern regions, including Papua, have experienced prolonged internal security disturbances—situations of violence that rarely rise to the formal threshold of "armed conflict" under international law yet inflict real suffering on real people. That proximity first moved me to read international humanitarian law not as a distant European doctrine but as a living question: *can the law reach the places where the guns are small but the pain is large?*

The more I read, the more I understood that the crisis of IHL is not a crisis of rules. It is a crisis of moral motivation. The Geneva Conventions are among the most widely ratified treaties on earth, yet civilians are still bombed, hospitals still attacked, prisoners still tortured. Something is missing. That missing element, I believe, is not another protocol or another court. It is an internal conviction—a recognition that my own humanity depends on my treatment of the other. This insight is not new. It is ancient. And it lives in the philosophy of my own region: *Sitou Timou Tumou Tou*, the Minahasan axiom formulated by Dr. Sam Ratulangi, which teaches that a human being lives to humanize others.

This book, therefore, is not a comprehensive treatise. It has serious limitations. It does not offer a new treaty text or a detailed enforcement mechanism. It does not pretend to solve all the puzzles of IHL. What it does is bring together the finest analyses of IHL from scholars around the world—from the battlefields of Sudan, Colombia, Syria, and Ukraine to the refugee camps of Germany and the maritime disputes of the South China Sea—and read them through the lens of a local wisdom that speaks to the universal condition of our shared existence. I am deeply grateful to every author whose work I have cited. Their scholarship gave this book its substance; the philosophy of my ancestors gave it its direction.

My sincere thanks go to the Faculty of Law, Universitas Sam Ratulangi, for supporting my academic journey and for allowing me the space to explore ideas that stretch beyond the usual curriculum.

To my lecturers, classmates, and friends: this book is as much yours as mine.

This book is written for students of law, for practitioners of humanitarian action, and for anyone who still believes that even war has limits. It is not a technical manual. It is an invitation to rethink why we obey the law—not from fear of punishment, but from the inner call to remain human.

Boydo Saragih
Manado, 2026

Chapter 1: Understanding International Humanitarian Law – A Comprehensive Introduction

1.1 The Paradox of War and Law

War has been a constant companion of human civilization. From the earliest recorded conflicts in the Book of Numbers, where the Israelites slew the men of Midian and took captive their women and children, to the systematic bombardments of the twentieth century and the drone strikes of the twenty-first, the conduct of armed conflict has repeatedly revealed humanity's capacity for both unspeakable cruelty and remarkable restraint. The central paradox that animates this book is simple yet profound: even in the midst of organized violence, human beings have consistently sought to impose limits on their own destructive capabilities. This is not merely an aspiration; it is a body of binding legal rules known as international humanitarian law (IHL).

IHL, also called the law of armed conflict or the law of war, represents one of the oldest and most universally ratified branches of international law. Its fundamental premise is that war, however brutal, has limits. These limits are not derived from military expediency alone, but from the recognition that human dignity survives even the breakdown of peaceful relations between states and the eruption of internal armed strife. The four Geneva Conventions of 1949, which today enjoy near-universal acceptance by 196 states, stand as the most tangible expression of this premise. Yet the law is far older, far richer, and far more contested than any single treaty or convention might suggest.

This opening chapter serves as your gateway into the complex, fascinating, and urgently important world of IHL. We will explore what IHL is and what it is not, distinguish it from neighboring legal frameworks, trace its historical evolution from ancient codes to contemporary challenges, and establish the foundational principles upon which the entire edifice rests. By the end of this chapter, you will possess the conceptual toolkit necessary to engage with the substantive chapters that follow on the conduct of hostilities, the

protection of wounded and sick, the treatment of detainees, the special situation of occupied territories, and the mechanisms of enforcement and accountability.

1.2 Defining International Humanitarian Law: Purpose and Scope

1.2.1 The Core Mandate

At its most essential level, international humanitarian law is a set of rules that seeks to limit the humanitarian consequences of armed conflict. It pursues this objective through two principal avenues. First, it restricts the means and methods of warfare—the weapons, tactics, and strategies that parties to a conflict may lawfully employ. Second, it mandates the protection and humane treatment of persons who are not, or are no longer, taking a direct part in hostilities: the wounded, the sick, the shipwrecked, prisoners of war, and civilians.

These two dimensions are inseparable. One cannot protect civilians without regulating how attacks are conducted; one cannot ensure humane treatment of captured soldiers without defining who qualifies as a combatant. Thus IHL is not a collection of aspirational platitudes but a meticulously crafted legal regime that balances two competing values: military necessity and humanitarian considerations. Military necessity recognizes that in war, it is permissible to use force to achieve the legitimate objective of weakening the enemy's military capacity. Humanitarian considerations insist that this permission is not a blank check. Even in the heat of battle, certain actions remain prohibited.

1.2.2 Distinguishing IHL from Other Legal Frameworks

A common source of confusion, even among legal professionals, is the relationship between IHL and other bodies of international law that may apply concurrently during armed conflict. Four distinctions are particularly important.

First, the United Nations Charter regulates the resort to force between states, known as *jus ad bellum* (the law on the use of force).

Article 2(4) prohibits the threat or use of force against the territorial integrity or political independence of any state, subject only to two exceptions: self-defense under Article 51 and Security Council authorization under Chapter VII. IHL, by contrast, is *jus in bello* (the law in war). It applies regardless of whether the resort to force was lawful. An aggressor state and a state acting in self-defense are bound by exactly the same IHL rules. This separation is deliberate: humanitarian protections should not depend on which side the international community deems justified.

Second, international human rights law protects individuals from arbitrary or abusive exercise of state authority at all times, both in peace and in war. While IHL and human rights law share a common core of non-derogable rights—the prohibition of torture, arbitrary deprivation of life, and slavery—they differ in important respects. IHL is specifically designed for armed conflict and contains rules that would be unthinkable in peacetime, such as the lawful targeting of enemy combatants. Human rights law, by contrast, generally permits the use of lethal force only as a last resort to protect life. The relationship between the two bodies of law is usually one of complementarity, with IHL serving as the *lex specialis* (specialized law) that governs the interpretation of human rights standards during armed conflict. Yet this interaction is not without tension, particularly in situations of military occupation and non-international armed conflict.

Third, international criminal law provides the machinery for prosecuting individuals who commit serious violations of IHL. While IHL defines obligations and prohibitions, it does not itself establish international tribunals or set out the elements of crimes in exhaustive detail. The Nuremberg and Tokyo tribunals after World War II, the ad hoc tribunals for the former Yugoslavia and Rwanda, and the permanent International Criminal Court (ICC) all derive their jurisdiction from the principle that certain violations of IHL constitute war crimes for which individuals bear personal criminal responsibility. The distinction is subtle but crucial: IHL tells you what you may not do; international criminal law tells you what happens if you do it anyway.

Fourth, the law of neutrality governs the rights and duties of states not party to an international armed conflict. Neutral states must refrain from supporting belligerents militarily, while belligerents must respect the inviolability of neutral territory.

Although neutrality law has diminished in practical importance since the Cold War, it remains formally part of the *jus in bello* and has influenced contemporary debates about the use of third-state territory by armed groups.

1.2.3 The Equality of Belligerents and the Non-Reciprocity of Humanitarian Obligations

Two structural features of IHL deserve emphasis at the outset. The first is the **equality of belligerents**: IHL binds all parties to an armed conflict equally, regardless of the justice of their cause. This feature has attracted criticism from those who argue that it grants legitimacy to aggressors and insurgents. Yet the alternative—permitting one side to disregard humanitarian rules because it believes its cause is just—would lead to an immediate downward spiral of violence, with devastating consequences for civilians and captured combatants alike. The equality of belligerents is not an endorsement of aggression; it is a recognition that humanitarian protections must be unconditional.

The second feature is the **non-reciprocity of humanitarian obligations**: a party to an armed conflict must respect IHL even when the enemy violates it. One cannot justify torture of prisoners by pointing to the enemy's torture of one's own soldiers. The Geneva Conventions make this explicit: the obligations they impose are to be respected "in all circumstances." The only limited exception is the law of reprisals, which permits carefully circumscribed retaliatory actions against enemy combatants and military objectives, but never against protected persons such as civilians, prisoners of war, the wounded, or medical personnel. Even then, reprisals are subject to stringent conditions: they must be a last resort, proportionate, preceded by a warning, and approved at the highest level of government.

1.3 The Sources of International Humanitarian Law

Like all branches of international law, IHL derives its binding force from three principal sources: treaties, customary international law, and general principles of law. To these must be added the increasingly important role of judicial decisions, expert

commentaries, and what is sometimes called "soft law."

1.3.1 Treaty Law: The Geneva and Hague Traditions

The history of IHL treaty-making is conventionally divided into two streams. The **Hague Law**, named after the International Peace Conferences of 1899 and 1907, focuses on the means and methods of warfare: the prohibition of certain weapons, the rights and duties of belligerents, and the status of combatants. Its most enduring product is the Hague Convention (IV) Respecting the Laws and Customs of War on Land of 1907, together with its annexed Regulations. The **Geneva Law**, named after the Geneva Conventions initiated by Henry Dunant following the Battle of Solferino in 1859, focuses on the protection of victims of armed conflict: the wounded, the sick, the shipwrecked, prisoners of war, and civilians.

This distinction, though analytically useful, has become increasingly blurred over time. The 1977 Additional Protocols to the Geneva Conventions integrated both traditions, regulating both the conduct of hostilities and the protection of victims. Today, the core treaties of IHL include:

- The four Geneva Conventions of 1949 (GC I–IV)
- Additional Protocol I of 1977 (international armed conflicts)
- Additional Protocol II of 1977 (non-international armed conflicts)
- Additional Protocol III of 2005 (additional distinctive emblem)
- The Hague Convention for the Protection of Cultural Property of 1954 and its two Protocols
- The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW) of 1980 and its five Protocols
- The Convention on the Prohibition of Anti-Personnel Mines of 1997 (Ottawa Treaty)
- The Convention on Cluster Munitions of 2008
- The Rome Statute of the International Criminal Court of 1998

Each of these treaties is binding only on states that have ratified or acceded to them. However, as we shall see, many of their provisions have passed into customary international law, binding all

states regardless of ratification.

1.3.2 Customary International Law

Customary international law arises from the general and consistent practice of states followed out of a sense of legal obligation (*opinio juris*). Unlike treaties, custom is unwritten, which creates both flexibility and uncertainty. Its flexibility allows it to adapt more quickly to new challenges; its uncertainty makes it harder to determine exactly what the rules are.

The most authoritative effort to identify customary IHL is the ICRC's 2005 study, which catalogued 161 rules derived from state practice spanning decades and continents. Among the most significant findings was that 135 of these rules apply identically to both international and non-international armed conflicts. This convergence has profound practical importance: most contemporary armed conflicts are non-international in character, yet the treaty law governing them is far less detailed than the treaty law governing international conflicts. Customary IHL fills many of these gaps, ensuring that basic protections apply regardless of classification.

Consider the prohibition of weapons that cause superfluous injury or unnecessary suffering. While Additional Protocol I explicitly prohibits such weapons in international armed conflicts, a state that has not ratified the Protocol remains bound by the customary prohibition. Similarly, the principle of distinction—requiring belligerents to distinguish between combatants and civilians—is now universally recognized as customary, binding all parties to any armed conflict.

1.3.3 General Principles of Law and the Martens Clause

The third source of international law is general principles of law recognized by civilized nations. These are principles so fundamental that they appear in virtually all mature legal systems: good faith, *pacta sunt servanda* (agreements must be kept), *nullum crimen sine lege* (no crime without law), and the prohibition of retroactive criminal liability.

In IHL, the most important general principle is arguably

the **Martens Clause**, first inserted into the preamble of the 1899 Hague Convention and repeated in subsequent instruments. It declares that in cases not covered by treaty law, civilians and combatants remain under the protection of the principles of international law derived from established custom, from the principles of humanity, and from the dictates of the public conscience. The Martens Clause serves as a reminder that the absence of an explicit treaty prohibition does not imply permission. It provides a residual source of protection, particularly important when new technologies or methods of warfare emerge that were not anticipated by existing treaties.

1.3.4 The Role of Judicial Decisions, Commentaries, and Soft Law

Treaties, custom, and general principles are the formal sources of law, but they require interpretation to be applied in practice. What constitutes "direct participation in hostilities"? When does a situation cross the threshold from internal disturbance to non-international armed conflict? How does one assess proportionality in an attack? These questions are answered not in the abstract but through the accumulated practice of international courts and tribunals, the authoritative commentaries of expert bodies, and the interpretive guidance of organizations like the ICRC.

The International Court of Justice (ICJ), the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the ICC have all produced jurisprudence that clarifies and develops IHL. The ICRC's Commentaries on the Geneva Conventions and Additional Protocols are widely regarded as highly authoritative interpretations, reflecting the organization's unique mandate and operational experience. Finally, non-binding instruments such as the UN Guiding Principles on Internal Displacement and the Montreux Document on Private Military and Security Companies provide valuable guidance on issues not fully addressed by binding law.

1.4 A Brief History of the Law of War on Land

1.4.1 From Antiquity to the Nineteenth Century

For millennia, the conduct of land warfare was governed by little more than the victor's whim. The biblical account of the war against Midian (Numbers 31) is chillingly representative: the Israelites killed every male, took captive the women and children, seized all livestock and property, and burned every city and encampment. Similar accounts appear throughout ancient history, from Assyrian reliefs depicting the impalement of captured enemies to the Roman practice of selling entire populations into slavery.

Exceptions existed, but they were rare and often limited to particular categories of persons. The Koran (Surah 47, verse 4) instructed believers to release prisoners either as a favor or in return for ransom. Sun Tzu, writing in the fourth century BCE, forbade the slaying of prisoners of war, recommending instead their absorption into one's own army. The Hindu legal treatise known as the Manusmriti (dating from sometime between 200 BCE and 200 CE) likewise prohibited the killing of captives, allowing enslavement or ransom as alternatives. Even these alternatives, inhumane as they may appear today, were improvements over the wholesale slaughter that had been standard practice.

The Middle Ages saw the emergence of ransom as a limited practice, but it applied primarily to knights and nobles, not to common soldiers. Prisoner exchanges became more common over subsequent centuries, continuing through the American Civil War (1861–1865), where a formal agreement on exchange proved entirely ineffective in practice. The suffering of wounded soldiers, abandoned to die on battlefields without medical care, remained largely unaddressed.

1.4.2 The Lieber Code and the Birth of Modern IHL

The first systematic attempt to codify humanitarian rules for land warfare was the **Lieber Code**, drafted by Professor Francis Lieber and promulgated as General Orders No. 100 of the Union Army in 1863. The Code contained detailed provisions on the protection of persons (especially women), religious and cultural property, and the humane treatment of prisoners of war. Although it was a national, not international, instrument, it served as a model for subsequent international lawmaking.

That same year, 1863, an international conference in Geneva

adopted resolutions calling for the establishment of national committees to assist military medical services and for the neutrality of ambulances and medical personnel. These resolutions led directly to the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, the first multilateral treaty of modern IHL. It adopted the red cross on a white background—the inverse of the Swiss flag—as a protective emblem.

1.4.3 The Hague Conventions and the Interwar Period

The 1899 and 1907 Hague Peace Conferences marked the next major milestone. The 1899 Convention (II) with Respect to the Laws and Customs of War on Land, and its 1907 successor Convention (IV), annexed Regulations that remain partially in force today. The preamble to the 1899 Convention introduced the Martens Clause, ensuring that populations and belligerents remained under the protection of the principles of international law, humanity, and the public conscience even where treaty law was silent.

The Hague Conferences also produced three Declarations: one prohibiting the launching of projectiles and explosives from balloons (a prohibition widely ignored once military aviation developed), one prohibiting the use of asphyxiating gases (violated by Germany at Ypres in 1915), and one prohibiting the use of expanding bullets (the so-called “dum-dum” bullets). Only the prohibition on expanding bullets proved durable, and it remains part of customary IHL today.

Between the world wars, the international community updated the Geneva Conventions (1906, 1929) and adopted the first convention exclusively dedicated to prisoners of war (1929). Yet these instruments proved tragically inadequate during World War II, as the Holocaust, the systematic abuse of prisoners, and the devastation of occupied territories revealed the limits of treaty protection without effective enforcement.

1.4.4 The 1949 Geneva Conventions and the 1977 Additional Protocols

The shock of World War II produced the most significant codification in IHL history: the four Geneva Conventions of August 12, 1949. GC I protects the wounded and sick on land; GC II protects the wounded, sick, and shipwrecked at sea; GC III protects prisoners of war; and GC IV—a groundbreaking innovation—protects civilians in time of war, including in occupied territories. Together, these four conventions have been ratified by every state on earth, making them the most universally accepted treaties in international law.

But the 1949 Conventions had a major limitation: they devoted only a single article—Common Article 3—to non-international armed conflicts. Common Article 3 requires humane treatment of persons taking no active part in hostilities, prohibits violence to life and person, hostage-taking, outrages upon personal dignity, and the passing of sentences without a fair trial. Yet it provides little detailed guidance on the conduct of hostilities or the treatment of captured fighters in civil wars.

The 1977 Additional Protocols sought to fill these gaps. Additional Protocol I (international armed conflicts) restated and developed the rules on the conduct of hostilities, gave combatant status to fighters engaged in wars of national liberation, and strengthened protections for civilians. Additional Protocol II (non-international armed conflicts) elaborated on Common Article 3, though its threshold of applicability—requiring that armed opposition groups exercise territorial control sufficient to conduct sustained military operations—was set so high that it applies only to the most intense civil wars.

1.4.5 The Weapon-Specific Treaties

Parallel to the Geneva Conventions, states negotiated a series of treaties prohibiting or restricting specific weapons. The 1868 St. Petersburg Declaration renounced the use of explosive projectiles under 400 grams, on the ground that they would uselessly aggravate the suffering of disabled men or render their death inevitable. The 1925 Geneva Protocol prohibited the use of asphyxiating, poisonous, and bacteriological weapons in war. The 1972 Biological Weapons Convention banned development, production, and stockpiling. The 1993 Chemical Weapons Convention imposed a comprehensive prohibition, backed by a

rigorous verification regime.

The 1980 Convention on Certain Conventional Weapons (CCW) is actually a framework convention with five attached protocols: Protocol I (non-detectable fragments), Protocol II (mines, booby-traps, and other devices), Protocol III (incendiary weapons), Protocol IV (blinding laser weapons), and Protocol V (explosive remnants of war). The Anti-Personnel Mine Ban Convention (Ottawa Treaty, 1997) and the Convention on Cluster Munitions (2008) represent efforts by a coalition of states to prohibit weapons that cause disproportionate harm to civilians, even when the major military powers declined to join.

1.4.6 The Legacy of Nuremberg and the Birth of International Criminal Justice

The post-World War II trials at Nuremberg and Tokyo established two principles of enduring importance. First, individuals bear criminal responsibility for war crimes, and official position—including head of state—provides no immunity. Second, superior orders do not excuse criminal conduct, though they may be considered in mitigation. These principles were reaffirmed by the ad hoc tribunals for the former Yugoslavia (ICTY, 1993) and Rwanda (ICTR, 1994), by the Special Court for Sierra Leone (2002), and by the permanent International Criminal Court (ICC), whose Rome Statute entered into force in 2002.

The ICC's jurisdiction over war crimes, crimes against humanity, genocide, and (as of 2018) the crime of aggression is complementary to national jurisdiction: the Court acts only when states are unwilling or unable genuinely to investigate and prosecute. More than 120 states have ratified the Rome Statute, though notable military powers—including the United States, Russia, and China—have not. Despite its limitations, the ICC represents the most ambitious institutionalization of individual criminal accountability in history.

1.5 The Foundational Principles of IHL

The entire structure of IHL rests on a handful of core principles. Understanding these principles is essential to applying any specific rule.

1.5.1 Military Necessity and Humanity

These two principles are in constant tension, and every IHL rule represents a particular accommodation between them. **Military necessity** permits the use of force to achieve the legitimate military objective of weakening the enemy's armed forces. It does not permit any measure that is not indispensable to that objective. **Humanity** forbids the infliction of suffering, injury, or destruction not necessary for the achievement of a legitimate military purpose. The balance between them varies across contexts, but it is never absent.

1.5.2 Distinction

The **principle of distinction** is the foundation of IHL's protection of civilians. It requires parties to an armed conflict to distinguish at all times between combatants and civilians, and between military objectives and civilian objects. Operations may be directed only against military objectives. Direct attacks against civilians or civilian objects are prohibited. Indiscriminate attacks—those that do not or cannot distinguish between military and civilian targets—are also prohibited.

The principle of distinction applies equally to the defender and the attacker. A defending party cannot shield military objectives by placing them in the midst of civilian populations. While the prohibition on using civilians as "human shields" is explicit, even unlawful shielding does not relieve the attacker of its obligations to distinguish, take precautions, and respect proportionality.

1.5.3 Proportionality

When a legitimate military objective is attacked, incidental loss of civilian life, injury to civilians, and damage to civilian objects may occur. The **principle of proportionality** prohibits attacks in which such incidental harm would be excessive in relation to the concrete and direct military advantage anticipated. Proportionality is not a precise mathematical calculation but a judgment call made in real time under the fog of war. It requires commanders to weigh the expected military gain against the foreseeable humanitarian cost. This is perhaps the most difficult judgment IHL demands, and it is unsurprisingly the site of intense legal and factual controversy in

virtually every armed conflict.

1.5.4 Precautions in Attack and Against the Effects of Attacks

The principle of distinction and the rule of proportionality are supplemented by detailed **precautionary obligations**. Those who plan or decide on an attack must do everything feasible to verify that the target is a military objective, to choose means and methods that avoid or minimize incidental harm to civilians, and to cancel or suspend an attack if it becomes apparent that the target is not military or that the incidental harm would be excessive. Feasibility is defined as what is practicable or practically possible, taking into account all circumstances prevailing at the time, including humanitarian and military considerations.

The defending party also bears precautionary obligations: to the maximum extent feasible, it must remove civilians and civilian objects from the vicinity of military objectives, avoid locating military objectives within or near densely populated areas, and take other necessary precautions to protect civilians under its control from the dangers of military operations.

1.5.5 Superfluous Injury and Unnecessary Suffering

The 1868 St. Petersburg Declaration articulated the principle that the only legitimate object of war is to weaken the enemy's military forces, and that it is sufficient to disable the greatest possible number of men. The use of weapons that uselessly aggravate the suffering of disabled men or render their death inevitable would exceed this legitimate object. This principle—prohibiting weapons of a nature to cause superfluous injury or unnecessary suffering—has been codified in Additional Protocol I and is part of customary IHL. It applies to the design and intended use of weapons, not merely to their misuse.

1.5.6 Humane Treatment

All persons who are not, or are no longer, directly participating in hostilities are entitled to **humane treatment** without any adverse distinction. This foundational rule, stated in Common Article 3 of the Geneva Conventions and elaborated throughout the conventions

and protocols, prohibits violence to life and person (including murder, mutilation, cruel treatment, and torture), hostage-taking, outrages upon personal dignity (including humiliating and degrading treatment), and the passing of sentences without a fair trial. Humane treatment is an absolute, non-derogable obligation that applies regardless of the conduct of the adversary.

1.6 Contemporary Challenges and the Future of IHL

No introduction to IHL would be complete without acknowledging the pressures under which the law currently operates. The post-Cold War era has witnessed the proliferation of non-international armed conflicts, the rise of asymmetric warfare, the privatization of military functions, the emergence of new weapons technologies, and the blurring of boundaries between armed conflict and law enforcement. Each of these developments has generated intense debate about the adequacy and interpretation of existing rules.

1.6.1 The "War on Terror" and Transnational Armed Conflict

The attacks of September 11, 2001, and the subsequent "global war on terror" announced by the United States, posed fundamental questions about the applicability of IHL to operations against non-state armed groups operating across international borders. When does a state's use of force against such groups cross the threshold from law enforcement to armed conflict? What is the geographic scope of a non-international armed conflict? What status do captured terrorist suspects possess: are they combatants entitled to prisoner-of-war status, or civilians subject to criminal prosecution? May they be held in preventive detention without trial for the duration of an open-ended conflict?

These questions remain contested. The ICRC and most legal scholars argue that the "global war on terror" is not a single armed conflict but a collection of separate armed conflicts, each with its own geographic and temporal scope. Detainees who are not entitled to prisoner-of-war status remain protected by Common Article 3 and, for states that have ratified it, Article 75 of Additional Protocol I, which provides fundamental guarantees for persons in the hands

of a party to an armed conflict. The practice of indefinite detention without review, secret detention, and coercive interrogation techniques have been widely condemned as violations of IHL and human rights law.

1.6.2 Asymmetric Warfare and the Erosion of Distinction

In asymmetric conflicts, where a technologically superior state faces a non-state armed group that cannot match its firepower, the weaker party often adopts tactics that blur the distinction between combatants and civilians: hiding among the civilian population, using civilian infrastructure for military purposes, and attacking civilians or civilian objects directly. These tactics violate IHL, but they also create acute dilemmas for the stronger party. How can it target enemy fighters who do not wear uniforms and who deliberately intermingle with civilians? How can it assess proportionality when the enemy uses schools and hospitals as command centers? How can it take precautions when the enemy's tactics are designed to exploit the state's reluctance to cause civilian casualties?

The answer to these dilemmas is not to abandon IHL but to apply it with realism and good faith. IHL already prohibits the use of human shields and the location of military objectives within densely populated areas. It requires that civilians be spared the effects of hostilities to the maximum extent feasible. It demands that all feasible precautions be taken in attack. These rules are demanding, but they are not impossible. They reflect the fundamental judgment that even in asymmetric warfare, the principle of distinction must be upheld—precisely because abandoning it would result in unacceptable levels of civilian suffering.

1.6.3 New Technologies: Drones, Cyber Operations, and Autonomous Weapons

Technological change has always driven the evolution of IHL, from the crossbow to the submarine to the atomic bomb. Three contemporary technologies are generating especially intense legal debate.

Remotely piloted aircraft (drones) have become a defining weapon of twenty-first-century warfare. Their use in targeted killing operations outside active battlefields raises questions about the geographic scope of armed conflict, the evidentiary standards for targeting, and the adequacy of precautions in attack when the attacker is physically remote from the target. IHL does not prohibit drones as such, but it requires that their use comply with distinction, proportionality, and precaution.

Cyber operations present even more novel challenges. When does a cyber operation constitute an "attack" under IHL, triggering the full range of rules on distinction and proportionality? How does one assess the proportionality of an attack on a military computer network that is integrated with civilian infrastructure? How does one distinguish military from civilian cyber networks in practice? The Tallinn Manual, produced by a group of experts convened by NATO's Cooperative Cyber Defence Centre of Excellence, represents the most authoritative effort to apply IHL to cyber warfare, but many questions remain unresolved.

Autonomous weapons systems—systems that can select and engage targets without human intervention—raise profound ethical and legal concerns. If a fully autonomous system commits a war crime, who bears criminal responsibility? The commander who deployed it? The programmer who wrote its algorithms? The manufacturer? The system itself? These questions have no easy answers, and states are currently engaged in discussions within the CCW framework about whether and how to regulate such systems. The ICRC has called for limits on autonomous weapons, including a prohibition on systems that cannot be used in compliance with IHL.

1.6.4 The Implementation Gap

The most persistent challenge facing IHL is not the absence of rules but the failure to comply with existing rules. In virtually every armed conflict, parties commit violations ranging from isolated acts by individual soldiers to systematic campaigns of terror against civilians. The causes of non-compliance are complex: lack of training, poor discipline, the rhetoric of existential threat, and the deliberate choice to violate the law when it seems advantageous to do so.

Closing the implementation gap requires sustained effort on

multiple fronts. States must incorporate IHL into domestic law, train their armed forces, and prosecute war crimes genuinely and effectively. The international community must support the ICC, the ad hoc tribunals, and other accountability mechanisms. The ICRC must continue its unique work of confidential dialogue with parties to conflicts, combined with public advocacy when necessary. The UN Security Council must exercise its powers to address serious violations that threaten international peace and security.

Perhaps most fundamentally, the international community must reaffirm the basic premise of IHL: that even in war, there are limits, and those limits are not optional. The alternative is not victory but barbarism.

1.7 Conclusion: Why This Book Matters

This chapter has provided a comprehensive introduction to international humanitarian law: its definition, its sources, its history, its principles, and its contemporary challenges. The chapters that follow will explore each of these topics in greater depth, from the classification of armed conflicts to the conduct of hostilities, from the protection of the wounded and sick to the treatment of detainees, from the special regime of occupation to the role of the ICRC and the mechanisms of enforcement.

The study of IHL is not an abstract intellectual exercise. It is a practical inquiry into how human beings can fight wars—which they will continue to do for the foreseeable future—while preserving the core of their humanity. The law cannot prevent war. It cannot end suffering. But it can, and sometimes does, save lives. It can prevent the worst atrocities. It can provide a framework for accountability. It can offer a vocabulary for describing and condemning brutality. These are not negligible achievements.

As you proceed through this book, keep in mind the faces of those whom IHL is designed to protect: the child hiding in a basement as bombs fall; the soldier wounded and captured, far from home; the family displaced from their village by the advance of armed groups; the medical worker risking her life to tend to the wounded from both sides; the prisoner of war waiting for repatriation; the civilian in occupied territory trying to live a normal life under extraordinary constraints. The law is for them. It is for us. And it is worth understanding.

Chapter 2: How International Humanitarian Law Develops – Historical Trajectories, Institutional Forges, and Future Pathways

2.1 Introduction: The Long Arc of Restraint

International humanitarian law (IHL) did not emerge *sui generis* from the genius of Henry Dunant or the diplomatic conferences of the nineteenth century. It is, rather, the product of a longue durée—a slow, uneven, and often contested accumulation of norms, practices, and institutions that stretch back millennia. To understand how IHL develops, one must resist the temptation to treat its history as a Whiggish narrative of linear progress. The arc of humanitarian law is long, but it does not bend inevitably toward justice. It bends because men and women have bent it, often in the face of overwhelming political and military opposition, and often only after catastrophic failures of the very norms they sought to entrench.

This chapter examines the development of IHL from three interconnected perspectives. First, it traces the historical evolution of the law from ancient codes of warfare through the Lieber Code, the Hague and Geneva traditions, the 1949 Conventions, the 1977 Additional Protocols, and the weapon-specific treaties of the late twentieth century. Second, it identifies the key institutional actors—states, the International Committee of the Red Cross (ICRC), the International Court of Justice (ICJ), international criminal tribunals, and non-state armed groups—that have shaped the law's content and interpretation. Third, it analyzes the contemporary challenges that are forcing IHL to adapt: asymmetric warfare, new technologies, the privatization of force, the fragmentation of battlefields, and the proliferation of non-binding normative instruments that risk undermining the law's coherence and authority.

Throughout this chapter, a central theme will emerge: the development of IHL is never purely doctrinal or doctrinal. It is driven by the dialectic between humanitarian aspiration and

military necessity, between the interests of states and the rights of individuals, between the imperative of codification and the dynamism of customary practice. The view of the past in IHL—how the drafters incorporated time, memory, and history into their prescriptions—reveals much about the law's present strengths and future vulnerabilities.

2.2 The Pre-History of IHL: From Ancient Codes to the Lieber Code

2.2.1 Antiquity and the Religious Foundations of Restraint

Long before the first Geneva Convention, every major civilization and religious tradition developed rules to limit the savagery of war. The Hebrew Bible recounts battles in which entire populations were put to the sword, but it also contains provisions for the treatment of captives and the protection of fruit trees during siege warfare (Deuteronomy 20:19–20). The Koran instructs believers to release prisoners either as a favor or in return for ransom (Surah 47, verse 4). Sun Tzu's *The Art of War* (fourth century BCE) forbade the slaying of prisoners, recommending instead their absorption into one's own army. The Hindu legal treatise known as the *Manusmriti* (c. 200 BCE–200 CE) similarly prohibited the killing of captives, allowing enslavement or ransom as alternatives.

These ancient norms were not, of course, enforced by international tribunals or backed by the threat of universal jurisdiction. They were embedded in religious and customary systems that derived their authority from sources beyond the state: divine command, honor, reputation, and the expectation of reciprocity. But they established the foundational idea that even in war, there are limits. The Martens Clause of 1899, which would later declare that populations and belligerents remain under the protection of "the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience," is the distant heir of these ancient traditions.

2.2.2 The Medieval and Early Modern Periods:

Chivalry and the Just War Tradition

The medieval period saw the fusion of Christian theology with the martial culture of chivalry to produce a body of customary rules governing the conduct of knights. The just war tradition, inaugurated by Saint Augustine of Hippo (354–430) and elaborated by Thomas Aquinas (1225–1274), distinguished between *jus ad bellum* (the justice of going to war) and *jus in bello* (the justice of conduct in war). While the just war tradition was primarily concerned with the former, it also articulated principles of distinction, proportionality, and humane treatment that would later be codified in IHL.

The chivalric codes, while often honored more in the breach than in the observance, required knights to spare non-combatants, treat prisoners with dignity, and respect the immunity of heralds and envoys. They also established the practice of ransom as an alternative to slaughter. The influence of these codes can be seen in the works of early modern jurists such as Hugo Grotius (1583–1645), whose *De Jure Belli ac Pacis* (1625) systematized the customary laws of war and argued that even in the midst of armed conflict, the dictates of humanity must be observed.

2.2.3 The Lieber Code: A National Instrument with International Consequences

The first systematic codification of the laws of war was not an international treaty but a national military manual: the Lieber Code, promulgated as General Orders No. 100 by President Abraham Lincoln in 1863. Drafted by the German-American jurist Francis Lieber, the Code was intended to govern the conduct of Union soldiers during the American Civil War. It contained detailed provisions on the protection of civilians, the treatment of prisoners of war, the prohibition of torture and summary execution, and the respect for cultural property.

The Lieber Code's significance for the development of IHL cannot be overstated. Although it was a domestic instrument, it served as a model for the Brussels Declaration of 1874 and the Hague Conventions of 1899 and 1907. It also established the principle that the laws of war bind individual soldiers, not merely states, and that violations may be punished as war crimes. As the

historian Anton De Baets has observed, the Lieber Code was “a national action, not applicable to other countries, but it served as one of the sources of the international actions which were to follow.”

2.3 The Hague and Geneva Traditions: Two Streams Converging

2.3.1 The Birth of the Geneva Conventions: Henry Dunant and the Battle of Solferino

The modern history of IHL begins on June 24, 1859, at the Battle of Solferino in northern Italy. There, the Swiss businessman Henry Dunant witnessed the aftermath of a battle that left more than 40,000 soldiers dead or wounded, abandoned on the field without medical care. Horrified by the suffering he saw, Dunant organized local villagers to provide aid to the wounded regardless of their nationality. After returning to Geneva, he wrote *A Memory of Solferino*, in which he made two proposals: first, that permanent volunteer relief societies be established to care for the wounded in wartime; and second, that an international treaty guarantee the neutrality of medical personnel and facilities.

The first proposal led to the founding of the International Committee of the Red Cross (ICRC) in 1863. The second led to the adoption of the first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field in 1864. Twelve states were parties to that initial convention, which adopted the red cross on a white background as the protective emblem for medical services.

2.3.2 The Hague Conventions: Regulating the Means and Methods of Warfare

If the Geneva tradition focused on the protection of victims of armed conflict, the Hague tradition focused on the regulation of means and methods of warfare. The first Hague Peace Conference of 1899 adopted three declarations: one prohibiting the launching of projectiles and explosives from balloons; one prohibiting the use of asphyxiating gases; and one prohibiting the use of expanding bullets

(the so-called “dum-dum” bullets). It also adopted the Convention (II) with Respect to the Laws and Customs of War on Land, whose annexed Regulations remain partially in force today.

The second Hague Peace Conference of 1907 revised and expanded the 1899 Convention. The resulting Convention (IV) Respecting the Laws and Customs of War on Land and its annexed Regulations are widely regarded as an authoritative statement of customary IHL. The preamble to the 1899 Convention contained the Martens Clause, which ensured that populations and belligerents remained under the protection of the principles of international law, humanity, and the public conscience even where treaty law was silent.

The distinction between Geneva law and Hague law was never absolute, but it reflected a division of labor that persisted until 1977. Geneva law protected victims; Hague law regulated weapons and tactics. The 1977 Additional Protocols would integrate both traditions into a unified legal framework.

2.3.3 The Interwar Period: Prisoners of War and Civilians

The experience of World War I revealed significant gaps in the protection of prisoners of war and civilians. The Hague Regulations had contained provisions on prisoners, but they proved inadequate in practice. The 1929 Geneva Convention relative to the Treatment of Prisoners of War filled many of these gaps, establishing detailed rules on the conditions of internment, the right to correspond with families, and the role of the ICRC as a neutral intermediary.

Proposals to extend similar protections to civilians, however, were rejected. The ICRC had prepared a draft convention on the protection of civilians in 1934, the so-called “Tokyo draft,” but the diplomatic conference scheduled to adopt it in 1940 never convened because of the outbreak of World War II. The result was that millions of civilians would suffer deportation, internment, and death without the protections that IHL would have afforded them. The failure of the Tokyo draft haunted the drafters of the 1949 Geneva Conventions and drove them to create the Fourth Convention, which finally extended comprehensive protection to civilians in time of war.

2.4 The 1949 Geneva Conventions: A Turning Point

2.4.1 The Four Conventions and Their Structure

The four Geneva Conventions of August 12, 1949, represent the most significant codification of IHL in history. They have been ratified by every state on earth—196 states as of 2025—making them the most universally accepted treaties in international law.

Convention I protects the wounded and sick on land. Convention II protects the wounded, sick, and shipwrecked at sea. Convention III protects prisoners of war, elaborating in detail the rules first articulated in the 1929 Convention. Convention IV protects civilians in time of war, including in occupied territories. Each Convention contains provisions on the treatment of protected persons, the role of the ICRC and Protecting Powers, the suppression of violations, and the grave breaches regime.

2.4.2 Common Article 3: The Convention within a Convention

The most innovative—and, at the time, most controversial—provision of the 1949 Conventions was Common Article 3, which applies to "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties." For the first time, IHL imposed binding obligations on states and non-state armed groups in civil wars: humane treatment without adverse distinction, the prohibition of violence to life and person (including murder, mutilation, cruel treatment, and torture), the prohibition of hostage-taking, the prohibition of outrages upon personal dignity, and the prohibition of the passing of sentences without a fair trial.

Common Article 3 was revolutionary. It breached the traditional wall of state sovereignty that had shielded internal conflicts from international regulation. It recognized that non-state armed groups could be parties to an armed conflict with rights and obligations under international law, even while denying them any formal legitimacy. And it established a minimum humanitarian standard applicable to all armed conflicts, whether international or internal.

As the ICJ would later hold in the *Nicaragua* case (1986),

Common Article 3 reflects "elementary considerations of humanity" that are binding on all states regardless of treaty obligations. The ICTY Appeals Chamber, in the *Tadić* interlocutory decision on jurisdiction (1995), went further, holding that violations of Common Article 3 entail individual criminal responsibility under customary international law.

2.4.3 The Grave Breaches Regime and Universal Jurisdiction

The 1949 Conventions also established a grave breaches regime: a list of particularly serious violations—including willful killing, torture, inhuman treatment, biological experiments, willfully causing great suffering, and extensive destruction of property not justified by military necessity—that states parties are obliged to suppress. States parties must enact legislation to provide effective penal sanctions for persons committing or ordering grave breaches. They must search for persons alleged to have committed grave breaches and bring them before their own courts, regardless of nationality, or extradite them to another state party that has made out a prima facie case.

This principle of universal jurisdiction over grave breaches was unprecedented in international law. It reflected the recognition that certain violations of IHL are crimes of concern to the entire international community, not merely to the belligerents directly affected. The grave breaches regime would later be expanded by Additional Protocol I and incorporated into the statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda and the International Criminal Court.

2.5 The 1977 Additional Protocols: Expanding and Deepening the Law

2.5.1 Additional Protocol I: International Armed Conflicts

The two Additional Protocols of June 8, 1977, were adopted after nearly a decade of preparatory work by the ICRC and diplomatic conferences. Additional Protocol I (AP I) applies to international

armed conflicts, including armed conflicts in which peoples are fighting against colonial domination, alien occupation, and racist regimes in the exercise of their right of self-determination.

AP I significantly expanded and deepened IHL in several respects. It codified for the first time the rules governing the conduct of hostilities: the principle of distinction, the prohibition of indiscriminate attacks, the principle of proportionality, and the duty to take precautions in attack and against the effects of attacks. It also elaborated the rules protecting civilians, civilian objects, medical personnel and facilities, and cultural property. Article 75 of AP I provided an extensive list of fundamental guarantees for persons in the power of a party to the conflict, including due process rights, protection against torture and cruel treatment, and the prohibition of collective punishment.

Perhaps most controversially, AP I relaxed the conditions for combatant status. Article 44 provided that combatants who cannot distinguish themselves from the civilian population due to the nature of hostilities retain their combatant status if they carry arms openly during military engagements and are recognizable as combatants before and after each engagement. This provision was designed to accommodate guerrilla fighters in wars of national liberation, but it provoked strong opposition from major military powers, including the United States, which has not ratified AP I.

2.5.2 Additional Protocol II: Non-International Armed Conflicts

Additional Protocol II (AP II) was intended to supplement Common Article 3 and provide more detailed regulation of non-international armed conflicts. The final text, however, was dramatically scaled back from the ICRC's original draft. The threshold of applicability was set very high: AP II applies only to armed conflicts that take place in the territory of a state party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of the territory as to enable them to carry out sustained and concerted military operations and to implement the Protocol.

This high threshold excludes many non-international armed conflicts—particularly those involving loosely organized insurgent groups that do not control territory—from the scope of AP II. Such

conflicts remain governed only by Common Article 3 and customary IHL. Nevertheless, AP II represented a significant advance. It elaborated the fundamental guarantees of humane treatment, provided specific protections for children, prohibited forced displacement, and established rules for penal prosecutions.

2.5.3 The ICRC Customary Law Study (2005)

The 1977 Protocols were the last major IHL treaties to achieve near-universal acceptance. In the decades that followed, the pace of treaty-making slowed dramatically, especially in areas outside the regulation of specific weapons. In response, the ICRC undertook a massive study of customary IHL, published in 2005, which identified 161 rules of customary international humanitarian law applicable to both international and non-international armed conflicts.

The study concluded that 135 of these rules apply identically to both types of conflict—a finding that has profound practical importance, given that most contemporary armed conflicts are non-international in character. The study has been widely cited by international courts and tribunals, by states in their military manuals, and by scholars. It has become the baseline for discussions of customary IHL, even while some of its conclusions remain contested.

As Theodor Meron, who served on the study's steering committee, has observed, the ICRC Customary Law Study "validates and lends the ICRC's authority to the *Tadić* decision" and "promotes the process of humanization of IHL in various ways, and in particular by the applicability of most of its rules, including command responsibility, to both international and non-international armed conflicts."

2.6 The Humanization of IHL: From Inter-State Reciprocity to Individual Rights

2.6.1 The Shift from State Rights to Individual Rights

One of the most profound developments in IHL over the past

century has been its gradual humanization: the shift from a legal regime conceived primarily as a set of reciprocal rights and obligations between states to a regime that recognizes the rights of individuals and imposes individual criminal responsibility for violations.

Traditional IHL was rooted in the principle of reciprocity. States accepted obligations in the expectation that their adversaries would do the same. The *si omnes* clause, which provided that a treaty would not apply if one of the belligerents was not a party, was an extreme articulation of this principle. The Hague Convention IV of 1907 contained such a clause, which threatened to undermine the Nuremberg proceedings until the Tribunal held that the principal provisions of the Convention had become customary international law.

The 1949 Geneva Conventions marked a decisive break with reciprocity. Common Article 1 requires states to "respect and ensure respect" for the Conventions "in all circumstances," regardless of the conduct of the adversary. The denunciation clauses of the Conventions provide that a denunciation cannot take effect until peace has been concluded and the release and repatriation of protected persons have been completed. The Vienna Convention on the Law of Treaties (1969) provides that provisions of a treaty of a humanitarian character relating to the protection of human persons are not subject to termination or suspension in response to a material breach.

2.6.2 The Emergence of Individual Criminal Responsibility

The Nuremberg and Tokyo trials after World War II established that individuals bear criminal responsibility for war crimes, crimes against humanity, and crimes against peace. Official position—including head of state—provides no immunity. Superior orders do not excuse criminal conduct, though they may be considered in mitigation. These principles were reaffirmed by the ICTY and ICTR, the Special Court for Sierra Leone, and the International Criminal Court.

The *Tadić* interlocutory appeal on jurisdiction (1995) was a watershed. The ICTY Appeals Chamber held that many rules of IHL governing international armed conflicts also apply to non-

international armed conflicts as a matter of customary international law, and that violations of those rules entail individual criminal responsibility. This decision effectively collapsed the traditional distinction between the two types of conflict for purposes of war crimes prosecution. It also provided the foundation for the ICRC Customary Law Study.

2.6.3 The Martens Clause and the Laws of Humanity

The Martens Clause, first articulated in the preamble to the 1899 Hague Convention II, provides that in cases not covered by treaty law, "populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience." The Clause was included in subsequent IHL treaties, including the 1949 Geneva Conventions and the 1977 Additional Protocols.

The Martens Clause serves several functions. It denies the argument that whatever is not explicitly prohibited by treaty is permitted. It provides a residual source of protection when treaty law is silent. It incorporates the "laws of humanity" and "dictates of the public conscience" as standards for evaluating the legality of conduct. And it ensures that the development of IHL is not frozen in time but can evolve through changes in public conscience and state practice.

As the ICJ observed in the *Nuclear Weapons* Advisory Opinion (1996), the Martens Clause has "proved to be an effective means of addressing the rapid evolution of military technology." It is, in effect, a mechanism for the humanization of IHL that operates outside the formal treaty-making process.

2.7 The Institutional Forges of IHL

2.7.1 States and the Treaty-Making Process

States remain the primary legislators of IHL. Only states can adopt treaties, and only states can ratify them. The treaty-making process is slow, cumbersome, and increasingly contested. The last major IHL treaties to achieve near-universal acceptance were the 1949 Geneva Conventions. The 1977 Additional Protocols have been

ratified by 174 and 169 states respectively—a remarkable number, but still leaving significant holdouts, including the United States (which has not ratified AP I). The weapon-specific treaties adopted since 1980 show a clear split between states that possess a particular weapon and states that do not. The Anti-Personnel Mine Ban Convention (1997) and the Convention on Cluster Munitions (2008) have been ratified by a majority of states, but not by the major military powers.

The difficulty of achieving consensus on new treaty law has led to the proliferation of non-binding normative instruments: political declarations, manuals, codes of conduct, and other forms of "soft law." These instruments have the advantage of being faster to negotiate and more flexible than treaties. But they also risk creating normative indeterminacy—a proliferation of rules that are not formally binding and whose legal status is unclear. As Bruno Demeyere, Editor-in-Chief of the *International Review of the Red Cross*, has warned: "When nothing is binding, when all is mere guidance or just an 'opinion,' when all is conveniently just a 'view' expressed by experts which do not formally represent States, who actually knows what the binding law is?"

2.7.2 The ICRC as Guardian of IHL

The ICRC occupies a unique position in the development of IHL. It is neither a state nor an intergovernmental organization, but a private association under Swiss law with a mandate derived from the Geneva Conventions, the Statutes of the International Red Cross and Red Crescent Movement, and its own right of humanitarian initiative. It is recognized as having international legal personality and has observer status at the United Nations.

The ICRC's role as "guardian" of IHL has three dimensions. First, it engages in operational activities: protecting and assisting victims of armed conflict, visiting detainees, facilitating the exchange of family messages, and providing medical and other humanitarian assistance. These activities give it unique insight into the practical challenges of implementing IHL.

Second, it promotes respect for IHL through confidential dialogue with parties to armed conflicts, dissemination of IHL knowledge, and training of military and civilian personnel. When confidential dialogue fails to prevent serious and repeated

violations, the ICRC may resort to public denunciation—a step it takes rarely and only under strict conditions.

Third, it contributes to the development and clarification of IHL. The ICRC drafted the 1949 Geneva Conventions and the 1977 Additional Protocols. It produces authoritative Commentaries on the Conventions and Protocols, which are widely regarded as highly persuasive interpretations. It conducted the Customary Law Study. It convenes expert processes to clarify contested concepts, such as the Interpretive Guidance on the Notion of Direct Participation in Hostilities (2009). It also engages in diplomatic initiatives to strengthen compliance with IHL, such as the joint Swiss-ICRC initiative on strengthening compliance with IHL, which led to the establishment of an intergovernmental process at the 2015 International Conference of the Red Cross and Red Crescent.

As Peter Maurer, who served as ICRC President from 2012 to 2022, has observed, the ICRC's work "breaks down into three pillars: law, operations and policy-diplomacy." The interaction among these pillars is what gives the ICRC its unique authority. The law is not developed in an ivory tower but in dialogue with operational realities; policy-diplomacy is not detached from the law but informed by it.

2.7.3 The International Court of Justice and IHL

The ICJ has made important contributions to the development of IHL, though its role has been less systematic than that of the international criminal tribunals. The Court's advisory and contentious jurisdiction has allowed it to address fundamental questions about the applicability and interpretation of IHL.

In the *Nicaragua* case (1986), the Court held that Common Article 3 reflects "elementary considerations of humanity" and is applicable to any armed conflict, whether international or non-international in character. It also held that the United States had violated its obligation under Common Article 1 to "ensure respect" for the Geneva Conventions by encouraging the Contras to commit violations.

In the *Nuclear Weapons* Advisory Opinion (1996), the Court rejected the argument that nuclear weapons were not subject to existing IHL principles. It held that the principles of distinction and the prohibition of unnecessary suffering apply to the use of any

weapon, including nuclear weapons. However, it could not reach a definitive conclusion on whether the use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense in which the very survival of a state is at stake.

In the *Wall* Advisory Opinion (2004), the Court held that the Fourth Geneva Convention applies to occupied territories and that Israel's construction of the wall in the Occupied Palestinian Territory violated several provisions of that Convention, as well as customary IHL and human rights law.

In the *Armed Activities on the Territory of the Congo* case (2005 and 2022), the Court applied the law of belligerent occupation in a context where the occupying power had only limited control over territory. It held that Uganda was responsible for serious violations of IHL, including the killing of civilians and the pillage of natural resources, and ordered Uganda to pay $325 million in compensation.

As former ICJ Judge Christopher Greenwood has observed, the Court's contribution to IHL "is neither systematic nor revolutionary," but it has helped to resolve a number of problems that have bedeviled IHL for many years, including the relationship between IHL and human rights law and the criteria for determining when territory is occupied.

2.7.4 International Criminal Tribunals and the Criminalization of IHL Violations

The international criminal tribunals established since 1993 have been the most important institutional forges of IHL in the past three decades. The ICTY, the ICTR, the Special Court for Sierra Leone, and the International Criminal Court have all contributed to the interpretation and clarification of IHL rules, the development of customary IHL, and the establishment of individual criminal responsibility for violations.

The *Tadić* decision (1995) is the most important single judgment in the history of IHL since Nuremberg. It held that serious violations of Common Article 3 entail individual criminal responsibility; that many rules of IHL governing international armed conflicts also apply to non-international armed conflicts as a matter of customary law; and that the distinction between the two types of conflict has been substantially eroded in customary IHL.

The *Kunarac* case (2002) established that rape may constitute an act of torture and that there is no need to bring expert medical evidence regarding the level of suffering experienced by the victim. It rejected the claim that rape could occur only when the victim showed continuous resistance and when physical force was used, and held that coercive circumstances negate the notion of consent.

The *Akayesu* case (1998) established that rape committed with the intent to destroy an ethnic group in whole or in part could constitute a genocidal act. It also held that the minimum protection provided for victims under Common Article 3 necessarily implies the need for effective punishment of all persons who violate it, without distinction as to rank, category, or official status.

The cumulative effect of these and hundreds of other judgments has been to transform IHL from a body of rules governing the responsibility of states to a body of rules governing the criminal responsibility of individuals. As Theodor Meron has observed, this is "a tidal shift" in international law, one that reflects "the increased (and highly sensible) recognition that it is the individuals—rather than abstract national entities—that make decisions in times of armed conflict."

2.8 Contemporary Challenges to the Development of IHL

2.8.1 Asymmetric Warfare and the Erosion of Distinction

The end of the Cold War saw a dramatic increase in non-international armed conflicts, many of them highly asymmetric. On one side are state armed forces with overwhelming technological superiority; on the other, non-state armed groups that cannot match that firepower and resort to guerrilla tactics, blending into civilian populations, using civilian infrastructure for military purposes, and sometimes directly targeting civilians. The result is that civilians are increasingly caught in the crossfire, suffering not only as incidental casualties but also as deliberate targets.

Asymmetric conflict poses acute challenges for IHL. When an armed group does not wear uniforms or carry arms openly, how can the state distinguish combatants from civilians? When the group

uses schools and hospitals as command centers, how can the state assess proportionality? When the group deliberately shields itself behind civilian populations, what precautions can the state take? The answer is not to abandon IHL but to apply it with realism and good faith. The prohibition on using human shields is explicit; the state's obligation to take feasible precautions remains binding; the principle of distinction does not collapse simply because the adversary refuses to respect it.

But the pressures on state forces are real, and there is evidence of a worrying erosion of restraint. The ICRC's 2016 *People on War* survey found that people living in countries affected by armed conflict had become more tolerant of civilian deaths and the use of torture than they were two decades earlier. The gap between normative development and actual practice remains wide, and closing it requires not merely legal reform but political will, military training, and the internalization of humanitarian norms.

2.8.2 New Technologies: Drones, Cyber Operations, and Autonomous Weapons

Technological change has always driven the evolution of IHL, from the crossbow to the submarine to the atomic bomb. The twenty-first century has seen three technologies that are forcing a reexamination of fundamental IHL concepts.

Remotely piloted aircraft (drones) have become a defining weapon of modern warfare. Their use in targeted killing operations outside active battlefields raises questions about the geographic scope of armed conflict, the evidentiary standards for targeting, and the adequacy of precautions in attack when the attacker is physically remote from the target. IHL does not prohibit drone strikes as such, but it requires that they comply with distinction, proportionality, and precaution. The fact that a pilot is sitting in a control room thousands of miles away does not change the legal analysis, though it may affect the feasibility of certain precautions, such as assessing whether a target is truly military or whether a civilian has suddenly appeared in the target area.

Cyber operations present even more novel challenges. When does a cyber operation constitute an "attack" under IHL, triggering the full range of rules on distinction and proportionality? The Tallinn Manual (2013), produced by a group of experts convened by

NATO's Cooperative Cyber Defence Centre of Excellence, represents the most authoritative effort to apply IHL to cyber warfare, but many questions remain unresolved. How does one distinguish military from civilian cyber networks when they are integrated? How does one assess the proportionality of an attack on a military network that will also disable a civilian hospital's power supply? How does one take feasible precautions when the effects of a cyber operation are difficult to predict?

Autonomous weapons systems—systems that can select and engage targets without human intervention—raise profound ethical and legal concerns. If a fully autonomous system commits a war crime, who bears criminal responsibility? The commander who deployed it? The programmer who wrote its algorithms? The manufacturer? The system itself? States are currently engaged in discussions within the Convention on Certain Conventional Weapons framework about whether and how to regulate such systems. The ICRC has called for limits on autonomous weapons, including a prohibition on systems that cannot be used in compliance with IHL. But consensus remains elusive.

2.8.3 The Privatization of Military Functions

The outsourcing of military and security functions to private military and security companies (PMSCs) has grown dramatically since the 1990s. In Iraq and Afghanistan, tens of thousands of PMSC personnel were deployed, sometimes outnumbering state military forces. These companies perform a wide range of functions, from logistics and training to armed security and interrogation.

The privatization of military functions poses several challenges for IHL. First, states cannot outsource their legal obligations. They remain responsible for ensuring that PMSCs they contract, or that operate from their territory, comply with IHL. Second, PMSC personnel who participate directly in hostilities are not entitled to combatant immunity and may be prosecuted under domestic law for acts that would be lawful if performed by state armed forces. Third, the presence of PMSC personnel on the battlefield can blur the distinction between combatants and civilians, making it harder for opposing forces to determine who may be lawfully targeted and who is entitled to protection.

The Montreux Document (2008), a joint initiative of the Swiss

government and the ICRC, restates the existing legal obligations of states and PMSCs and provides good practices for ensuring compliance. It has been endorsed by more than fifty states and by several PMSCs. But it is not a treaty, and it does not create new binding obligations.

2.8.4 The "War on Terror" and the Challenge of Transnational Armed Conflict

The attacks of September 11, 2001, and the subsequent "global war on terror" announced by the United States, posed fundamental questions about the applicability of IHL to operations against non-state armed groups operating across international borders. When does a state's use of force against such groups cross the threshold from law enforcement to armed conflict? What is the geographic scope of a non-international armed conflict? What status do captured terrorist suspects possess: are they combatants entitled to prisoner-of-war status, or civilians subject to criminal prosecution? May they be held in preventive detention without trial for the duration of an open-ended conflict?

These questions remain contested. The ICRC and most legal scholars argue that the "global war on terror" is not a single armed conflict but a collection of separate armed conflicts, each with its own geographic and temporal scope. Detainees who are not entitled to prisoner-of-war status remain protected by Common Article 3 and, for states that have ratified it, Article 75 of Additional Protocol I. The practice of indefinite detention without review, secret detention, and coercive interrogation techniques have been widely condemned as violations of IHL and human rights law.

The controversy over detention in the "war on terror" has revealed the dangers of legal indeterminacy. When states argue that existing IHL is inadequate to address new threats, and when they adopt novel legal categories such as "unlawful enemy combatant," they risk undermining the normative coherence of IHL. The solution is not to abandon the law but to interpret and apply it faithfully, and to develop new rules where genuine gaps exist.

2.9 The Future of IHL Development: Normative Indeterminacy or Renewed

Commitment?

2.9.1 The Proliferation of Non-Binding Norms

As the treaty-making process has become more difficult, states and non-state actors have increasingly turned to non-binding normative instruments to address new IHL challenges. Political declarations, such as the 2022 Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas, set out norms that are not formally binding but that may influence state practice and opinio juris. Manuals, such as the Tallinn Manual on cyber warfare, restate existing law and propose interpretations. Codes of conduct, such as the Geneva Code of Conduct on the Protection of Civilians from the Use of Explosive Weapons in Populated Areas, commit signatories to certain practices without creating legal obligations.

The proliferation of non-binding norms is a double-edged sword. On one hand, it allows for faster and more flexible responses to new challenges. On the other hand, it risks creating normative indeterminacy: a proliferation of rules that are not formally binding and whose legal status is unclear. When nothing is binding, when all is mere guidance or opinion, who actually knows what the law is? The risk is that states will cherry-pick the norms that suit them and ignore those that do not, undermining the law's authority.

2.9.2 The Role of Judicial Interpretation

In the absence of new treaties, international courts and tribunals will continue to play a crucial role in developing IHL through interpretation. The ICC, the ICJ, and the European Court of Human Rights have all issued judgments that clarify IHL rules and their application to new situations. The ICRC's updated Commentaries on the Geneva Conventions and Additional Protocols provide authoritative interpretations that are widely cited by courts and practitioners.

But judicial interpretation has limits. Courts can only decide the cases before them. They cannot address every contested issue, and they are constrained by the principle of legality. The result is that some areas of IHL remain underdeveloped, while others are subject

to conflicting interpretations.

2.9.3 The Need for Political Will

The most persistent challenge facing IHL is not the absence of rules but the failure to comply with existing rules. In virtually every armed conflict, parties commit violations ranging from isolated acts by individual soldiers to systematic campaigns of terror against civilians. The causes of non-compliance are complex: lack of training, poor discipline, the rhetoric of existential threat, and the deliberate choice to violate the law when it seems advantageous to do so.

Closing the compliance gap requires political will—the willingness of states and non-state armed groups to invest in IHL training, to discipline violators, and to accept accountability for violations. It requires the international community to support the ICC and other accountability mechanisms, and to use diplomatic and economic pressure to bring violators into compliance. It requires the ICRC to continue its confidential dialogue with parties to conflicts, combined with public advocacy when necessary. And it requires the UN Security Council to exercise its powers to address serious violations that threaten international peace and security.

2.10 Conclusion: The Long View

The development of IHL is a story of slow, uneven, contested progress. From the ancient codes of warfare to the 1949 Geneva Conventions, from the Nuremberg trials to the ICC, from the Martens Clause to the Tallinn Manual, the law has evolved in response to the horrors of war. But the evolution has never been automatic or inevitable. It has required the efforts of dedicated individuals, the pressure of public opinion, the jurisprudence of international courts, and the willingness of states to accept constraints on their sovereignty.

The view of the past in IHL—how the drafters incorporated time, memory, and history into their prescriptions—reveals much about the law's present strengths and future vulnerabilities. The non-retroactivity principle limits the temporal scope of the law, but customary international law and the Martens Clause extend it backwards. Imprescriptibility extends it forward, but amnesties and

the pressure for reconciliation cut the other way. State succession ensures that humanitarian obligations devolve with territory, but only if the international community insists on it.

The response of IHL drafters to five major historical challenges —war crimes, the Holocaust, human rights, civil wars, and colonialism—came after long delays. In each case, the law lagged behind the reality of armed conflict. In each case, the delay was measured in decades, not years. The lesson is clear: the development of IHL must be assessed on a transgenerational scale. Progress is possible, but it is never guaranteed.

As this book proceeds to its substantive chapters, the reader should keep in mind the longue durée of IHL. The rules governing the conduct of hostilities, the protection of the wounded and sick, the treatment of detainees, and the status of civilians in occupied territory are not timeless truths but human artifacts, forged in the crucible of war and refined through the labor of generations. They are worth understanding—and worth defending.

Chapter 3: The Unfinished Business of War – Actors, Numbers, Bodies, and the Shifting Moral Terrain of International Humanitarian Law

3.1 Introduction: Beyond the Binary

International humanitarian law has long rested on a set of foundational binaries: combatant and civilian, international and non-international armed conflict, state actor and private actor, jus ad bellum and jus in bello, legitimate target and protected person. These distinctions have provided the architecture for a legal regime that, for all its imperfections, has saved countless lives and restrained the savagery of war. Yet the twenty-first century has exposed the fault lines beneath this architecture. The proliferation of hybrid actors—maritime militias that are simultaneously fishing vessels and state-directed paramilitary forces, private military and security companies that blur the line between contractor and combatant, armed groups that control territory and provide governance—has made the binary categories of IHL increasingly difficult to apply. At the same time, the nature of contemporary armed conflict has shifted in ways that the drafters of the 1949 Geneva Conventions could not have anticipated: wars are fought in cities, not on battlefields; civilians are not merely incidental casualties but often the primary targets; the distinction between combatant and civilian is deliberately obscured by non-state actors who blend into populations; and the very means of warfare—drones, cyber operations, autonomous weapons—challenge the fundamental principles of distinction, proportionality, and precaution.

This chapter examines the unfinished business of international humanitarian law: the areas where existing rules are inadequate, contested, or simply ignored, and where the development of new norms—whether through treaty, custom, or soft law—remains urgently needed. It does so by engaging with a diverse body of recent scholarship, empirical studies, and institutional reports that illuminate the gaps between IHL's normative aspirations and the

realities of contemporary armed conflict. The chapter is organized around four thematic clusters. The first examines the challenge of hybrid actors, focusing on maritime militias as a case study of the legal ambiguity that arises when states deploy ostensibly civilian vessels for paramilitary purposes. The second analyzes the human costs of armed conflict through the lens of public health, drawing on empirical studies from Sudan, Colombia, and the Eastern Mediterranean region to show how war destroys health systems, disrupts education, and creates cascading vulnerabilities for women, children, and the chronically ill. The third explores the sociology of quantification in war—the politics of casualty counts, the forensic and methodological challenges of counting the dead, and the ways in which numbers become weapons in narrative warfare. The fourth engages with the deep moral philosophy of killing in war, revisiting the revisionist critique of the traditional just war framework and its implications for the moral equality of combatants, the liability of noncombatants, and the relationship between jus ad bellum and jus in bello.

Throughout this chapter, a central argument will emerge: the development of IHL cannot be understood solely as a process of doctrinal refinement or treaty negotiation. It is shaped by the material realities of conflict, the strategic interests of states and non-state actors, the advocacy of humanitarian organizations, the jurisprudence of international courts, and the evolving moral intuitions of publics who consume war through media. The gaps in IHL are not merely technical lacunae awaiting legislative filling; they are sites of political struggle, epistemic contestation, and moral disagreement. Closing these gaps requires not only legal creativity but also political will, institutional capacity, and a willingness to confront uncomfortable questions about who bears responsibility for the suffering that war produces.

3.2 Hybrid Actors and the Ambiguity of Status: The Case of Maritime Militias

3.2.1 The Rise of the Third Maritime Force

In the contested waters of the South China Sea, the East China Sea, and other maritime flashpoints, a new type of actor has emerged:

the maritime militia. These are organized groups of fishermen and civilian mariners who, under the direction of state authorities, engage in activities that range from routine fishing and maritime rights defense to intelligence gathering, patrol, and even quasi-military operations. As Liu and Cui observe in their study of maritime militias in international law, these entities are increasingly referred to as the "third maritime force" after navies and coast guards. Their appeal to states is obvious: deploying naval vessels risks military escalation and raises complex issues of self-defense and the use of force; deploying coast guard or fisheries enforcement vessels can escalate tensions between law enforcement and civilians; but deploying maritime militias offers a means of asserting maritime claims through low-intensity confrontation that stops short of armed conflict.

The legal status of maritime militias, however, is deeply ambiguous. International law provides no dedicated treaty regime for these hybrid entities. Instead, their legal characterization shifts depending on context: during peacetime, they may be treated as fishing vessels under the United Nations Convention on the Law of the Sea (UNCLOS); when engaged in state-directed missions, they may be considered "ships used only on government non-commercial service" entitled to sovereign immunity; during armed conflict, their personnel may be classified as civilians, combatants, or unlawful combatants depending on their conduct and organization. This fluidity is not accidental. As Liu and Cui argue, states have deliberately cultivated legal ambiguity as a strategic asset: by keeping the status of maritime militias indeterminate, they preserve deniability while maximizing operational flexibility.

3.2.2 Peacetime Status: UNCLOS and the Fiction of Ownership

Under UNCLOS, the legal status of a vessel depends primarily on its use at the time of the relevant incident, not on its ownership or registration. Article 32 of UNCLOS places "ships used only on government non-commercial service" on par with warships, granting them immunity from the jurisdiction of any state other than the flag state. This category is understood to include coast guard vessels, customs cutters, and other state-operated ships engaged in public functions. Fishing vessels, by contrast, are subject

to the enforcement jurisdiction of coastal states in their exclusive economic zones and territorial seas.

The problem, as Liu and Cui note, is that maritime militia vessels are neither clearly one nor the other. A fishing boat that operates independently in the morning and responds to a state-directed tasking in the afternoon changes its legal status without changing its physical characteristics. International law does not prohibit the conversion of private vessels into state vessels, but such conversion requires clear notification and visible identification. The 1907 Hague Convention VII sets out six conditions for the conversion of merchant vessels into warships, including that the vessel must be under direct state authority, bear the external marks of warships, and be commanded by a state-commissioned officer. No equivalent framework exists for the conversion of fishing vessels into state non-commercial service vessels.

Liu and Cui propose that the determinative factor should be the nature of the specific activity rather than the vessel's ownership or registration. When a maritime militia vessel is engaged in fishing, it should be treated as a fishing vessel, subject to the jurisdiction of the flag state and the enforcement powers of coastal states under UNCLOS Articles 73 and 62. When it is conscripted for state tasks—patrol, reconnaissance, law enforcement assistance, search and rescue—it acquires the characteristics of a state vessel entitled to immunity. This functional approach, while conceptually coherent, faces practical difficulties. It requires real-time assessment of intent and activity, which is rarely possible in the fog of maritime encounters. It also creates perverse incentives: states may instruct their militia vessels to maintain a civilian façade while pursuing strategic objectives, relying on the difficulty of proving otherwise.

3.2.3 Status During Armed Conflict: Combatants, Civilians, or Auxiliaries?

When the threshold of armed conflict is crossed, the legal status of maritime militia personnel becomes a matter of international humanitarian law. The Third Geneva Convention of 1949 defines prisoners of war to include members of militias and volunteer corps belonging to a party to the conflict, provided they satisfy four conditions: (a) being commanded by a person responsible for subordinates; (b) having a fixed distinctive sign recognizable at a

distance; (c) carrying arms openly; and (d) conducting operations in accordance with the laws and customs of war. Maritime militia personnel who meet these conditions would be entitled to prisoner-of-war status upon capture. But the distinctive sign requirement is particularly problematic for forces that operate from fishing vessels: they cannot easily display a recognizable emblem without compromising their civilian cover.

The 1977 Additional Protocol I relaxed the conditions for combatant status in certain circumstances, providing in Article 44 that combatants who cannot distinguish themselves from the civilian population due to the nature of hostilities retain their combatant status if they carry arms openly during military engagements and are recognizable as combatants before and after each engagement. This provision was designed for guerrilla fighters in wars of national liberation, but it might apply to maritime militias operating in contexts where the entire civilian maritime population is engaged in support of the war effort.

More commonly, however, maritime militia vessels are likely to be classified as auxiliary vessels rather than warships. The San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994) defines an auxiliary vessel as “a vessel, other than a warship, that is owned by or under the exclusive control of the armed forces of a State and used for the time being on government non-commercial service.” Auxiliary vessels are legitimate military targets under Article 65 of the Manual, but they are not entitled to the same combatant privileges as warships. Their crews, if captured, are entitled to prisoner-of-war status only if they meet the conditions of the Third Geneva Convention—which, again, requires a distinctive sign and open carriage of arms.

The practical consequence is that maritime militia personnel who engage in hostilities while aboard unmarked fishing vessels risk being treated as unlawful combatants, subject to prosecution under domestic law for acts that would be lawful if performed by uniformed military personnel. This is not an unintended gap in the law; it is the price of the ambiguity that states have cultivated. As Liu and Cui observe, “the intended hybrid legal status, which may create new risks of norm violations under coastal state obligations in UNCLOS, under core principles of international humanitarian law, and under attribution rules in ARSIWA, necessitates a balanced framework of international law through a comprehensive

approach."

3.2.4 Attribution of State Responsibility for Maritime Militia Conduct

The International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) provide the framework for attributing the conduct of maritime militias to their home states. Article 4 attributes the conduct of state organs, including de jure organs such as military forces and law enforcement agencies. Article 5 attributes the conduct of persons or entities that exercise elements of governmental authority. Article 8 attributes conduct directed or controlled by a state.

The challenge lies in the standard of control required for attribution. In the 1986 Nicaragua case, the International Court of Justice applied an "effective control" standard, holding that the United States' financing, organizing, training, and supplying of the Contras was insufficient to attribute the Contras' acts to the United States; the United States would have had to exercise control over the specific operations in which the alleged violations occurred. The ICTY, in the 1999 Tadić case, adopted a more expansive "overall control" standard, holding that a state's organization, coordination, or planning of a group's military actions—even without direct orders for specific operations—suffices for attribution.

The choice of standard has profound implications for maritime militias. Under the effective control standard, states would need to have issued specific operational orders to militia vessels for their conduct to be attributed. Under the overall control standard, strategic coordination and resourcing might be enough. Liu and Cui note that "the fact that maritime militias primarily operate in contested waters means that reliance on the 'effective control' standard could paradoxically mitigate sovereignty disputes, as states face higher evidential burdens to attribute militia conduct."

To resolve this uncertainty, Liu and Cui propose that future legal developments should focus not on the control question but on the definition of internationally wrongful acts. If a maritime militia's conduct violates a state's international obligations—for example, by interfering with innocent passage, unlawfully boarding foreign vessels, or using force against civilian vessels—then attribution under Article 8 should be determined by the overall control

standard, consistent with the humanitarian purposes of IHL. But where the militia's conduct is consistent with international law—lawful fishing, routine navigation, even passive intelligence gathering—no internationally wrongful act occurs, regardless of the degree of state control. This approach shifts the focus from the difficult question of control to the more tractable question of whether the conduct itself violates a binding norm.

3.2.5 Implied Permissions and the Limits of Prohibition

One of the more controversial arguments advanced by Liu and Cui is that, in the absence of explicit legal prohibition, some actions by maritime militias should be permitted. They invoke the legacy of the Lotus case (1927), in which the Permanent Court of International Justice held that states retain discretionary authority absent explicit prohibitions. While the Lotus principle has been substantially qualified in subsequent jurisprudence—particularly in the context of human rights and humanitarian law—Liu and Cui argue that it retains relevance for the regulation of maritime militias.

The pragmatic rationale is that maritime militias, for all their risks, can play positive roles in specific contexts: maritime patrols, search and rescue, environmental protection, and resource management. If these activities do not materially threaten the sovereignty or security of other states, a measured degree of freedom can help balance competing interests. Moreover, in scenarios prone to conflict, maritime militias can employ low-intensity measures to address potential provocations, preventing minor incidents from escalating into larger conflicts.

This argument is not without risks. The implied permission rationale could be abused by states seeking to legitimize aggressive conduct under the guise of ambiguity. But Liu and Cui are careful to cabin the argument: implied permission applies only to actions that neither breach treaty obligations nor customary international law, and only when the actions are consistent with the fundamental spirit of international law, including non-aggression and good faith. The burden of proof remains on the state asserting the permission, and the international community retains the power to condemn conduct that exceeds these bounds.

3.3 The Health and Human Costs of Armed Conflict: Evidence from Sudan, Colombia, and the Eastern Mediterranean

3.3.1 Sudan: The Collapse of Care and the Crisis of Displacement

The armed conflict that erupted in Sudan on April 15, 2023, between the Sudanese Armed Forces and the Rapid Support Forces, has produced one of the worst humanitarian crises of the twenty-first century. As of the writing of the study by Ibrahim, Ibrahim, and Ali (2026), over 61,000 people had been killed in Khartoum State alone, more than 8.2 million had been displaced, and the violence had spread from Khartoum to Darfur, Al Jazeera, Kordofan, and other states. The conflict has not only caused direct deaths and injuries but has also destroyed the infrastructure of care: hospitals bombed, clinics looted, medical personnel displaced, supply chains severed.

The empirical survey conducted by Ibrahim and colleagues between December 2023 and October 2024, involving 243 women and 122 children, provides a granular picture of the human costs. Among the women surveyed, 48.8% reported symptoms of depression, including loss of energy (47.8%) and loss of interest (48%). Sleep disturbances affected 93.5%. Headaches (33.6%), back pain (26.2%), and abdominal pain (9.2%) were commonly reported physical manifestations of psychological distress. Chronic diseases—diabetes, hypertension, asthma, thyroid disorders—affected 27.4% of participants, and of these, 56.3% reported a decline in disease management, 53.5% cited the lack of health centers, and 69.8% noted that specialists had been displaced.

The educational disruption was equally severe. Among women who were students or had children in school, 74% were still seeking solutions to resume their studies. Only 9% continued their education within Sudan; an equal percentage studied abroad; 8% pursued online education. For children, the impact was catastrophic. According to mothers' reports, 87.6% of children had witnessed armed conflict. Depression symptoms among children included sadness or low mood (19.7%), irritability or anger (16.4%), aggression (9.1%), and concentration difficulties (10.7%).

There was a statistically significant difference ($p = 0.000639$) between children who witnessed armed conflict and those who were unable to continue their education.

The reproductive health consequences were particularly stark. More than half of the women surveyed (56.9%) reported irregular menstrual cycles. Of those who were pregnant or became pregnant after April 15, 2023, 36.4% experienced miscarriage or stillbirth. The causes of fetal loss included psychological state (27.8%), shortage of chronic disease medications (11.1%), prolonged travel during displacement (11.1%), lack of hospital access and antenatal care (5.6%), and unknown causes (44.4%). These figures reflect not only the direct violence of war but also the secondary effects: the destruction of health infrastructure, the displacement of medical personnel, the breakdown of supply chains for medications, and the psychological trauma that cascades from mother to fetus.

Ibrahim and colleagues emphasize that their study, based on a self-selected online sample, likely underrepresents the most vulnerable populations—those without internet access, those who have been displaced multiple times, those in areas where internet service has been completely disrupted. As the Rapid Support Forces took control of Al Jazeera State and then a third state during the course of the study, internet services were cut, and contact with many participants was lost. The true scale of the crisis is almost certainly worse than the data suggest.

3.3.2 Colombia: Health System Fragmentation and the Legacy of Conflict

Colombia's armed conflict, which has lasted more than five decades, has been studied extensively for its health impacts. The qualitative study by Bernal and colleagues (2024) provides a systematic analysis of how the conflict affected the Colombian health system, drawing on interviews with policymakers at national and local levels, NGO representatives, and members of international organizations.

The direct health impacts of the Colombian conflict included deaths of combatants and civilians, disabilities from injuries and landmines, sexual violence primarily against women, and mental health disorders. But the indirect effects were equally damaging: the destruction of water and sanitation infrastructure, the

contamination of water sources by oil pipeline bombings, the creation of mosquito breeding grounds by illegal mining, and the confinement of populations that prevented access to food, medicine, and routine care.

The conflict's effect on health system governance was profound. In zones most affected by armed conflict, leadership and governance were under the control of armed groups rather than state authorities. Health facilities that remained open were often staffed by personnel who feared for their safety. Interviewees reported that health professionals were kidnapped to provide care for armed groups, that armed confrontations occurred in or near health facilities, and that medical missions were attacked. One participant described the fear of knowing whom one was treating: "a wounded person would arrive, and one cannot ask, and at any moment other insurgents would arrive to kill him inside the health center."

The financing of health services in conflict zones was distorted by the costs of security and transportation. One participant noted that "health costs skyrocketed" because of the cost of processing care, the need for security expenditures, and the higher salaries required to persuade health professionals to work in dangerous areas. Corruption in the health sector was also exacerbated by conflict: armed groups sought to capture health resources to finance war weapons.

The Colombian health system's response to these challenges was fragmented and uneven. The preparation for response did not occur systematically; instead, international organizations such as the United Nations and the Red Cross responded more robustly than the state itself. Public policies such as the Psychosocial and Comprehensive Health Program for Victims (PAPSIVI) and the Rural Health Plan of the Peace Agreement were designed but faced implementation difficulties due to lack of human resources, lack of coordination at the local level, corruption, and shallow stakeholder interest.

One of the most striking findings of the Bernal study is the critique of Colombia's insurance-based health system model. Several interviewees argued that the problem of access and quality of care is not solely a consequence of conflict but is rooted in the structure of the health system itself. The general social security system, they contended, "did not respond to our conflicts, nor did it have the

capacity to rise as primary care." The system is designed as an economic transaction, not as a mechanism for reaching dispersed rural populations. The discourse of primary care, one participant argued, "is a reality among us who have lived it for many years, but Law 100 ended it."

The Colombian case illustrates a broader lesson: the health impacts of armed conflict are not merely the result of violence; they are mediated by the pre-existing structure of the health system, the distribution of resources between urban and rural areas, the presence or absence of the state in contested territories, and the capacity of local institutions to adapt to crisis. In the absence of these mediating factors, conflict-induced health crises become permanent features of the post-conflict landscape.

3.3.3 Antimicrobial Resistance in Conflict Zones: The Silent Pandemic

The Eastern Mediterranean Region of the World Health Organization presents a particularly stark illustration of the relationship between armed conflict and antimicrobial resistance (AMR). As Moghnieh and colleagues (2025) document, nine of the region's 22 member states are affected by armed conflict and institutional fragility, contributing to over 40% of global humanitarian needs and more than 60% of the world's refugees, despite constituting only about 10% of the global population.

Using data from the WHO Global Antimicrobial Resistance Surveillance System (GLASS) from 2017 to 2021, Moghnieh and colleagues compared AMR rates and surveillance efforts in conflict-affected countries (Afghanistan, Iraq, Libya, Somalia, Sudan, Syria, Yemen), fragile countries (Lebanon and Occupied Palestinian Territories), and non-conflict countries subdivided by income. The findings are alarming.

Conflict-affected countries reported significantly fewer sentinel surveillance sites per million population than non-conflict countries (mean difference 0.60, $p < 0.001$) and fewer bacteriologically confirmed bloodstream infections per million population (mean difference 31.00, $p = 0.003$). This reflects the destruction of laboratory infrastructure, the displacement of trained microbiologists, and the breakdown of reporting systems. In conflict zones, the proportion of bloodstream infections caused by

Acinetobacter spp. and S. aureus was higher than in non-conflict countries, though the differences did not reach statistical significance due to the small number of reporting sites.

The resistance rates themselves are staggering. Carbapenem resistance in Acinetobacter spp. exceeded 65% across all groups, peaking in fragile zones at 83.38%. Third-generation cephalosporin-resistant E. coli ranged from 47.99% to 76.34%, peaking in conflict zones. Carbapenem-resistant K. pneumoniae ranged from 14.49% to 45.70%, peaking in conflict zones and non-conflict low-middle-income countries. Methicillin-resistant S. aureus (MRSA) exceeded 30% across all groups, peaking in conflict zones at 70.09%.

The drivers of AMR in conflict zones are multiple and mutually reinforcing. First, the destruction of water, sanitation, and hygiene infrastructure facilitates the spread of resistant pathogens. Shrapnel from explosives damages water treatment facilities, leading to interrupted water supplies and compromised sterile conditions in hospitals. Second, infection prevention and control programs are severely degraded: healthcare workers are killed or displaced, training is interrupted, and the environmental cleaning necessary to control Acinetobacter—a pathogen notorious for its persistence on dry surfaces—becomes impossible. Third, antibiotic use becomes erratic: in the absence of guidelines and diagnostic capacity, clinicians rely on whatever antibiotics are available, often broad-spectrum and last-line agents. Fourth, the influx of poor-quality generic antibiotics and the over-the-counter availability of antibiotics in neighboring countries exacerbate resistance. Fifth, there is emerging evidence that heavy metals from bombings may co-select for antibiotic resistance, as bacteria exposed to metals develop cross-resistance to antibiotics.

Moghnieh and colleagues emphasize that addressing AMR in conflict zones requires context-specific strategies tailored to the unique challenges of each setting. In high-conflict areas, the priority must be on restoring WASH services, providing essential antibiotics (especially those in the WHO Access category), and implementing high-impact IPC interventions such as hand hygiene and patient cohorting. In low-intensity conflict and fragile states, the focus should be on strengthening surveillance through capacity-building projects, integrating IPC indicators into hospital accreditation standards, and addressing the needs of refugee camps and displaced populations through vaccination campaigns and clean water

provision. The National Action Plans on AMR, developed with WHO support, provide a framework, but implementation depends on political will and international support.

3.4 The Sociology of War Counting: How Numbers Become Weapons

3.4.1 The Allure and the Fog of Quantification

In his study of "war counting," Ori Swed (2026) advances a sociological framework for understanding how numbers are produced, utilized, interpreted, and contested within the context of armed conflict. Swed defines war counting as "the practice of quantifying the elements and consequences of armed conflict," encompassing everything from casualty counts and weapons destroyed to refugees displaced and calories delivered in humanitarian aid packages. Quantification in war, Swed argues, serves three functions: (a) as a benchmark for performance assessment and planning (similar to its use in business and policy); (b) as a political tool to present a favorable image, influence audiences, and support claims; and (c) as an integral part of war narratives and propaganda, where each side enlists numbers to bolster or disprove claims that may affect the war effort.

The appeal of quantification is obvious. Numbers promise objectivity, replicability, and a way to cut through the biases and partisanship of "common sense." But as Swed notes, "every quantification depends on the quality of the data and the operationalization of the phenomena measured," and these can produce meaningful biases. In the context of war, the challenges to reliable quantification are amplified: access to conflict zones is restricted; the political stakes are existential; the fog of war obscures events; and the very act of counting can become a form of warfare.

3.4.2 The Forensic and Methodological Challenges of Casualty Counting

Casualty counts are the most recognized form of war counting, but they are also the most fraught. As Swed documents, reliable

enumeration requires a robust public health apparatus: trained personnel to collect and identify the dead, comprehensive databases of civilians and combatants, and the forensic capacity to identify remains that may be fragmented or degraded. Even in wealthy countries with sophisticated systems, casualty counting is difficult. After the 9/11 attacks, New York City's public health system could not handle the count alone; as of 2024, hundreds of cases remained open. A study by Aguirre and Quarantelli (2008) revealed the systematic omission of Hispanic men from the official lists, illustrating how racial biases can distort even the most well-intentioned counting efforts.

In active conflict zones, the challenges are exponentially greater. Hospitals are bombed; morgues are destroyed; personnel are killed or flee; the dead are buried hastily or not at all. The state of casualties can be poor, leaving only fragments of human tissue that require advanced DNA analysis. Access to conflict zones is often impossible for independent investigators, leaving counting to the parties to the conflict—who have powerful incentives to manipulate the numbers.

Even when bodies are recovered and identified, the classification of individuals as combatants or civilians remains contested. International humanitarian law provides guiding parameters, but historians, data scientists, human rights organizations, medical professionals, and journalists almost never conduct legal investigations of each death. Instead, they rely on rough assessments based on official reporting. This results in significant variation across data producers. The Correlates of War (COW) dataset, the UCDP Georeferenced Event Dataset (GED), and the Armed Conflict Location & Event Data (ACLED) all operationalize fatalities differently. COW and GED count "battle-related deaths" but are unclear on whether this includes accidents, friendly fire, suicide in service, or disease-related deaths. ACLED, more transparently, acknowledges that its numbers change constantly and that there are multiple biases related to reporting, including the inability to capture "collateral damage."

3.4.3 War Narratives and the Politicization of Numbers

The Wikipedia case study provided by Swed is a vivid illustration of

how casualty counts become contested in the public sphere. Analyzing the casualty count of the 2023 Israel-Hezbollah conflict across ten language pages, Swed found wide variation in numbers and in the sub-categories presented. The Hebrew page presented a narrative of Israeli success: 2,448 Hezbollah militants killed versus 48 Israeli soldiers killed. The Arabic page allowed readers to choose between the Israeli narrative (adjusted numbers) and Hezbollah's narrative (over 2,000 Israeli soldiers killed, 596 Hezbollah militants killed). The English page, catering to the largest audience, adopted sub-categories and numbers nearly identical to the Arabic page, suggesting a dominance of one narrative.

This is not an isolated phenomenon. A glance at the Russia-Ukraine War Wikipedia pages shows a difference of about half a million Russian casualties (956,810 versus 404,700). Similar gaps appear for the War in Afghanistan, the Sudanese Civil War, the Syrian Civil War, and the Libyan Civil War. Swed argues that these gaps reflect not merely differences in information access but active narrative contestation. Wikipedia, as a democratically edited platform, becomes a battlefield in the war of narratives. Each decision about what to count, how to count it, and how to frame the numbers is a political act.

The weaponization of numbers extends beyond casualty counts. The Ukrainian armed forces have created a program, the Army of Drones Bonus, that incentivizes combat performance through a point system: a tank is worth 40 points, a mobile rocket system 50 points. Units share videos of hits to gain points, which are traded for equipment. This is quantification as gamification, turning the destruction of enemy materiel into a competitive metric. Similarly, ISIS produced graphics counting attack types—sniper attacks, bicycle bombs, mortar attacks—to demonstrate its activity to donors and supporters. These metrics are tailored to the expectations of specific audiences.

3.4.4 The Ethical Dilemmas of War Counting

Swed is careful to acknowledge the ethical tensions inherent in war counting. Reducing human suffering to metrics—body counts, displacement figures, number of hostages—risks dehumanizing the lived experiences behind the numbers. Yet such data can be analytically necessary. The challenge is to maintain sensitivity to

the moral tension between empirical rigor and the human cost these figures represent.

One of the most troubling aspects of war counting is its role in what Tyner (2009) called the "utilitarian and mechanical numeration of people" in an environment of moral exclusion that "rationalizes and excuses harm inflicted on those outside the scope of justice." When casualty counts are used to assess military success—as in the Vietnam War, where officers were pressured to produce favorable body counts to the point of sending soldiers as "bait"—they facilitate decisions that bring misery and catastrophe to many. Gregory (2022) has argued that even well-intentioned efforts to reduce civilian casualties, such as the Civilian Casualty Tracking Cell in Afghanistan, can become complicit in the killing by rendering it manageable and accountable.

Yet war counting also serves important normative functions. Human rights organizations use casualty counts to argue for compliance with IHL, to name and shame violators, and to press for accountability. Anti-war activists use civilian casualty counts to challenge the legitimacy of military interventions. The right to the truth for families of the missing depends on accurate counting and identification. The challenge, as Swed puts it, is to "simultaneously leverage the practical benefits of quantification while ensuring that counting activities reinforce—rather than erode—the integrity of the international legal order."

3.5 The Moral Equality of Combatants and the Revisionist Critique

3.5.1 The Traditional Theory and Its Discontents

The traditional theory of the just war, as articulated by Michael Walzer and others, rests on three foundational tenets: (1) the independence of jus in bello from jus ad bellum; (2) the moral equality of soldiers, according to which just and unjust combatants have an equal right to kill; and (3) the requirement of discrimination, which holds that combatants may intentionally attack only opposing combatants, not noncombatants.

Jeff McMahan's influential critique, presented in his 2006 paper "The Ethics of Killing in War" and developed in subsequent work,

challenges all three tenets. McMahan begins with a simple intuition: in individual self-defense, a culpable attacker has no right to defend himself against the justified defensive force of his victim. If you attack me without justification, and I defend myself, you cannot claim self-defense against my counterattack. Your original wrongdoing forfeits your right not to be attacked. The same logic, McMahan argues, applies in war. Unjust combatants—those fighting for a cause that lacks just cause—are analogous to culpable attackers. Just combatants are analogous to justified defenders. Therefore, unjust combatants have no right to kill just combatants, and just combatants do not wrong unjust combatants by killing them.

Walzer famously rejected this analogy, arguing that soldiers are not personally responsible for the justice of the war they fight. They are subject to coercion, deception, indoctrination, and the legal obligation to obey orders. "Their war is not their crime." For Walzer, these considerations excuse unjust combatants from responsibility for fighting, rendering them morally equal to just combatants.

McMahan counters that excuses are not justifications. An unjust combatant who fights because he has been coerced or deceived may be blameless, but that does not mean he acts permissibly. The distinction between justification (the act is right) and excuse (the agent is not blameworthy even though the act is wrong) is crucial. Unjust combatants may be excused, but they are not justified. And the laws of war, for practical reasons, may treat them as if they were justified, but that is a matter of legal convention, not deep morality.

3.5.2 The Independence of Jus in Bello from Jus Ad Bellum

McMahan's most radical challenge is to the independence of jus in bello from jus ad bellum. According to the traditional view, the proportionality requirement in jus in bello weighs the harm caused by an act of war against its "military value"—its contribution to victory. This calculation is the same for just and unjust combatants alike. McMahan argues that this cannot be right. If a war is unjust, then the end of victory is not a good; it may be a positive evil. One cannot weigh the harms caused by an act of war against the

contribution to victory if victory itself has no value. Therefore, the proportionality calculation for unjust combatants has nothing to weigh against the harms they cause.

There is a narrow exception: unjust combatants may permissibly use force to prevent just combatants from engaging in wrongful acts. If just combatants are about to commit a war crime—attacking civilians, for example—unjust combatants may use force to stop them. But such acts are defensive, not offensive; they are not part of the prosecution of the unjust war but a constraint on it. For the vast majority of acts in an unjust war, no such justification exists. Therefore, McMahan concludes, "in general, unjust combatants cannot participate in war without doing wrong." This conclusion is incompatible with the traditional doctrine of the moral equality of soldiers.

3.5.3 The Criterion of Liability: Responsibility, Not Threat-Posing

The traditional requirement of discrimination is grounded in the idea that those who pose a threat (combatants) lose their immunity to attack, while those who do not pose a threat (noncombatants) retain it. McMahan rejects this as both overinclusive and underinclusive. Using the famous example of the Non-Responsible Threat—a person who has been drugged and programmed to kill you but is not morally responsible for the threat—he argues that posing a threat is not sufficient for liability. You may not kill such a person in self-defense because she has done nothing to forfeit her right to life. Conversely, using the example of the Initiator—the person who programmed the Non-Responsible Threat but now poses no threat himself—McMahan argues that posing a threat is not necessary for liability. If you must choose between killing the Non-Responsible Threat (who poses the threat but is not responsible) and killing the Initiator (who is responsible but poses no threat), justice requires killing the Initiator.

What matters, McMahan argues, is moral responsibility for the unjust threat—not necessarily culpability (the agent may be excused), but responsibility in the sense of being the agent whose voluntary action created or sustains the threat. Unjust combatants, even if they are fully excused by coercion or deception, are responsible for the threats they pose because they are the agents of

those threats. They are therefore liable to defensive force. Noncombatants who bear significant responsibility for initiating or sustaining an unjust war—political leaders, weapons manufacturers, even voters and taxpayers in some degree—may also be liable, though the degree of their liability varies with their causal contribution and moral responsibility.

This responsibility criterion has two implications that will strike many as deeply counterintuitive. First, it implies that some noncombatants are legitimate targets in war. Second, it implies that in an unjust war, there are no legitimate targets at all (except in the narrow defensive exception). McMahan is aware of these implications and addresses them.

3.5.4 The Practical Irrelevance of Noncombatant Liability

McMahan argues that, in practice, noncombatants will almost never be legitimate targets, not because they lack liability in principle but because the proportionality calculation will almost always rule out attacks on them. The degree of responsibility of most noncombatants—voters, taxpayers, ordinary citizens—is so low that the harm inflicted by a military attack would be wildly disproportionate to the good achieved. Moreover, even if there are some highly responsible noncombatants—the United Fruit executives in the 1954 Guatemala coup—they are intermingled with nonresponsible noncombatants, making it impossible to direct force against them alone. And the epistemic problem is insurmountable: just combatants can seldom know which noncombatants are responsible and to what degree.

Thus, while the responsibility criterion implies that the traditional requirement of discrimination is false as a matter of deep morality, it does not imply that combatants should start attacking civilians. On the contrary, the practical upshot of the responsibility criterion is that combatants should continue to observe the prohibition on intentional attacks on civilians, but for different reasons: not because civilians are never liable, but because attacking them is almost never proportionate, and because violating the convention would undermine the restraints that protect all civilians in all wars.

3.5.5 The Laws of War as a Separate Normative Domain

McMahan distinguishes between the "deep morality of war"—the principles that determine what is genuinely right and wrong—and the "laws of war" or conventions that should regulate conduct in practice. The laws of war must be designed to maximize compliance with the deep morality of war given the realities of human psychology, the fog of war, and the near-universal belief among combatants that their cause is just. This means that the laws of war will often diverge from the deep morality of war. For example, the laws of war should probably treat all combatants as morally equal, even though they are not, because punishing unjust combatants for mere participation in an unjust war would be impractical, would risk victor's justice, and would deter surrender. Similarly, the laws of war should probably continue to prohibit intentional attacks on civilians, even though some civilians are liable, because the alternative would open the door to atrocities.

This distinction raises a difficult question: if the laws of war diverge from deep morality, should combatants obey the law or follow their moral judgment? McMahan is cautious. He suggests that in most cases, the laws of war should be followed, because the consequences of violating them—eroding the convention, giving the enemy an excuse to retaliate in kind—are likely to outweigh the goods achieved by following deep morality in a particular case. But he does not rule out the possibility that deep morality might occasionally require the violation of the laws of war, and in such cases, the conscientious combatant must decide. The stakes are high, and self-deception is a constant danger.

3.6 The Role of Institutions and the Future of IHL Development

3.6.1 The ICJ and the Judicial Development of IHL

As Christopher Greenwood observes in his retrospective on the International Court of Justice's contribution to IHL, the Court's role has been "neither systematic nor revolutionary," but it has been significant in several respects. In the Nicaragua case (1986), the

Court held that Common Article 3 reflects "elementary considerations of humanity" and is applicable to any armed conflict, whether international or non-international. In the Nuclear Weapons Advisory Opinion (1996), the Court rejected the argument that nuclear weapons were not subject to existing IHL principles and held that the principles of distinction and the prohibition of unnecessary suffering apply to their use, though it could not reach a definitive conclusion on their legality in extreme circumstances of self-defense. In the Wall Advisory Opinion (2004), the Court held that the Fourth Geneva Convention applies to occupied territories and that Israel's construction of the wall in the Occupied Palestinian Territory violated several provisions of that Convention. In the Armed Activities on the Territory of the Congo case (2005 and 2022), the Court applied the law of belligerent occupation to a context where the occupying power had only limited control over territory, held Uganda responsible for serious violations including the killing of civilians and pillage of natural resources, and ordered Uganda to pay $325 million in compensation.

Greenwood notes that the Court's insistence on State practice as the primary source of customary IHL is a "welcome reminder of the need for greater rigor" in assessing the content of the law. In the Nuclear Weapons Opinion, the Court rejected arguments that a specific prohibition on nuclear weapons had emerged from General Assembly resolutions, noting that these resolutions ran counter to the actual practice of states with nuclear arsenals. This methodological conservatism may frustrate those who want the Court to lead the development of IHL, but it is consistent with the Court's role as interpreter of existing law, not legislator.

3.6.2 The ICRC as Guardian and the Challenge of Normative Indeterminacy

The ICRC occupies a unique position in the development of IHL. As Bruno Demeyere notes in his editorial for the International Review of the Red Cross, the ICRC is neither a state nor an intergovernmental organization, but a private association under Swiss law with a mandate derived from the Geneva Conventions, the Statutes of the Movement, and its own right of humanitarian initiative. Its role as "guardian" of IHL includes operational activities (protecting and assisting victims), legal development

(drafting treaties, producing Commentaries, conducting the Customary Law Study), and policy-diplomacy (engaging with states and armed groups to promote compliance).

Yet Demeyere raises a troubling concern: the proliferation of non-binding normative instruments—political declarations, manuals, codes of conduct—risks creating "normative indeterminacy." When nothing is binding, when all is mere guidance or opinion, who knows what the law is? The risk is that states will cherry-pick the norms that suit them and ignore those that do not, undermining the law's authority. This concern is particularly acute in areas where treaty-making has stalled, such as cyber warfare and autonomous weapons.

The interview with Peter Maurer, who served as ICRC President from 2012 to 2022, provides a practitioner's perspective on these challenges. Maurer identifies hybridization as the defining feature of contemporary armed conflict: battlefields that are simultaneously kinetic, digital, cyber, and space-based; wars that are protracted, with deep systemic impacts on entire societies; the fragmentation and proliferation of actors; the marginalization and stigmatization of populations in the aftermath of wars. The ICRC has had to update its understanding of fundamental concepts like distinction, proportionality, and precaution to ensure they remain fit for purpose in this new environment.

Maurer also emphasizes the importance of evidence-based policymaking. By collecting evidence from the field, the ICRC brought attacks on healthcare onto the multilateral agenda and built momentum for the 2022 Political Declaration on the Use of Explosive Weapons in Populated Areas. This is a success story in legal terms: a decade of work culminating in a political declaration that, while non-binding, establishes a norm that will influence state behavior. But Maurer acknowledges that non-binding instruments are not always sufficient. "When nothing is binding, when all is mere guidance or just an 'opinion,' when all is conveniently just a 'view' expressed by experts which do not formally represent States, who actually knows what the binding law is?"

3.6.3 Religion and IHL: Resources for Compliance

Andrew Bartles-Smith's article on religion and IHL makes a case for re-engaging with the religious roots of humanitarian law. Most

people in the world are religious, and religion becomes even more important in times of crisis and insecurity. Belligerents are often animated by religious ideas, and religious institutions possess vast networks, moral authority, and means to influence behavior. Yet the humanitarian sector has been functionally secular, often marginalizing religion in the mistaken belief that neutrality requires keeping a distance from religious stakeholders.

Bartles-Smith argues that engagement with religious circles can improve compliance with IHL in several ways. First, religious norms and IHL often converge on core principles—distinction, proportionality, humane treatment, protection of noncombatants—and comparison can reinforce the legitimacy of both. Second, religious institutions can disseminate IHL to communities that are otherwise unreachable, using trusted messengers and culturally resonant language. Third, religious leaders can influence belligerents by appealing to their moral values and spiritual commitments. Fourth, religious practices such as prayer, meditation, and confession can bolster the psychological resilience of combatants, helping them to act with restraint in the extreme circumstances of war.

Bartles-Smith is not naive about the risks. Religion has also been instrumentalized to justify atrocities, dehumanize enemies, and sanctify violence. But he argues that disengagement is not the answer. Humanitarian organizations must engage with religious circles, not despite the risks but because of them. Only by building relationships of trust and dialogue can the humanitarian community hope to counter the instrumentalization of religion for violent ends and amplify the voices of religious leaders who advocate for restraint.

The ICRC's engagement with religious circles has grown significantly in recent years, including projects on Buddhism and IHL, Hinduism and IHL, and the Religion and Humanitarian Principles website. Bartles-Smith concludes that "the rich legacy of restraint in all religions and cultures must be embraced, both to legitimize IHL and to inspire its further development."

3.7 Conclusion: The Long Arc of Restraint, Revisited

This chapter has surveyed the unfinished business of international humanitarian law across multiple domains: the hybrid actors that

evade binary classification, the public health crises that cascade from armed conflict, the politics of numbers that shape how wars are perceived and judged, the moral philosophy that challenges the traditional equality of combatants, and the institutional actors—the ICJ, the ICRC, religious communities—that continue to shape the law's evolution.

Several themes recur. First, the development of IHL is not a purely doctrinal process; it is shaped by the material realities of conflict, the strategic interests of states, the advocacy of humanitarian organizations, and the moral intuitions of publics. Second, the gaps in IHL are not merely technical lacunae; they are sites of political struggle, epistemic contestation, and moral disagreement. Third, the distinction between law and morality, between deep principles and legal conventions, is crucial for understanding both the limitations and the possibilities of IHL. The laws of war are not the deep morality of war, and they should not be expected to be. But they are the best mechanism we have for restraining violence in the most extreme of social settings.

The arc of IHL is long, but it does not bend inevitably toward justice. It bends because men and women have bent it, often in the face of overwhelming political and military opposition, and often only after catastrophic failures of the very norms they sought to entrench. The work of bending remains unfinished. Maritime militias will continue to operate in the grey zones of the law. Armed conflicts will continue to destroy health systems and displace millions. Casualty counts will continue to be contested, weaponized, and mourned. Philosophers will continue to debate the moral equality of soldiers. And institutions like the ICRC, the ICJ, and the ICC will continue to push, unevenly and imperfectly, toward greater compliance with the rules that even war cannot erase.

The question for the next generation of IHL scholars, practitioners, and advocates is not whether the law needs to develop—it always does—but how to ensure that its development serves the humanitarian purposes for which it was created. That requires attention not only to the law's content but also to its implementation, not only to the actions of states but also to the experiences of the women, children, and men who bear the costs of armed conflict. It requires a willingness to confront uncomfortable truths about who is responsible for suffering and who bears the burden of restraint. And it requires a commitment to the

proposition that even in war, there are limits, and those limits are not optional.

This chapter has traced the unfinished business of international humanitarian law across hybrid actors, public health catastrophes, the politics of casualty counting, and the revisionist challenge to the moral equality of combatants. Yet all these fault lines converge on a single, inescapable reality: armed conflict does not merely suspend the rules of peacetime governance; it actively unravels the social fabric that sustains families, communities, and entire populations. Nowhere is this unraveling more visible, more deliberate, and more devastating than in the displacement of human beings from their homes. The following chapter therefore shifts from the battlefield and the courtroom to the camps, the shelters, and the precarious margins where refugees and internally displaced persons struggle to survive. It examines forced displacement not as an accidental byproduct of war, but as a strategic weapon, a public health emergency, and a long-term psychological wound that persists long after the guns fall silent. In doing so, it grounds the abstract principles of IHL in the lived experience of those whom the law is meant to protect—and too often fails to reach.

Chapter 4: The Dispossessed – Refugees, Internally Displaced Persons, and the Long Shadow of Armed Conflict

4.1 Introduction: The Scale of Forced Displacement in the Twenty-First Century

By the middle of 2023, more than 110 million people across the globe had been forcibly displaced from their homes. This staggering number—equivalent to the entire population of Japan or Egypt—represents not merely a statistical abstraction but a human catastrophe of almost unimaginable proportions. War, persecution, human rights abuses, and the deliberate destruction of civilian infrastructure have uprooted families, shattered communities, and created cascading vulnerabilities that persist for decades. Among those displaced, approximately one-third have crossed international borders to become refugees, while the remaining two-thirds remain within their own countries as internally displaced persons (IDPs). Yet the distinction between these categories, while legally significant, often obscures more than it reveals. Refugees, at least in principle, benefit from the protection of the United Nations High Commissioner for Refugees (UNHCR) and the international legal framework of the 1951 Refugee Convention. IDPs, by contrast, occupy a more precarious legal space: they are not entitled to the same international protections, and their fate depends largely on the willingness—or unwillingness—of their own governments to acknowledge and address their plight.

The three studies examined in this chapter illuminate different facets of the displacement crisis. The first, by Rahim Hajji, investigates the prevalence and determinants of loneliness among refugees in Germany, drawing on the IAB-BAMF-SOEP survey of more than 4,400 refugees who arrived between 2013 and 2016. Hajji's findings reveal that nearly one in three refugees experiences loneliness—a rate twice that of the general German population—and that this loneliness is statistically associated not only with flight conditions (such as fleeing alone and experiencing sexual harassment or physical assault) but also with personality traits

(anxiety, external control beliefs, negative reciprocity) and host country conditions (living in shared accommodation, feeling unwelcome, experiencing discrimination). The study challenges the common assumption that displacement itself is the sole driver of psychological distress, showing instead that the conditions of reception and the internal psychological resources of refugees matter profoundly.

The second study, by Samer Bakkour and Rama Sahtout, shifts the focus from the psychology of displacement to its strategic instrumentalization. Examining the Syrian Civil War, they argue that internal displacement is not merely a consequence of armed conflict but a deliberate tactic employed by the Assad regime to achieve military, political, and demographic objectives. Through sieges, indiscriminate aerial bombardment, massacres, and so-called "reconciliation agreements," the regime has systematically emptied contested areas of their populations, "filtered" civilians by presumed loyalty, and repopulated strategically important zones with pro-regime elements. The authors draw on extensive documentation from international organizations and local activist groups to demonstrate that displacement in Syria is a form of "demographic engineering" that extends beyond the battlefield into the post-conflict political order. The regime's use of siege and starvation, the evacuation of opposition fighters and civilians to Idlib, and the passage of laws enabling the confiscation of property from displaced persons all point to a coherent strategy that anticipates a future Syria purged of dissenting populations.

The third study, by Peter Heudtlass, Niko Speybroeck, and Debarati Guha-Sapir, provides a quantitative macro-perspective on excess mortality in complex humanitarian emergencies. Using data from the Complex Emergency Database (CEDAT), which aggregates mortality surveys conducted by humanitarian agencies between 1998 and 2012, they compare all-cause mortality rates among IDPs, refugees, and resident (non-displaced) populations. Their findings are striking: the median death rate ratio (DRR) for IDPs is 2.5 times the baseline mortality in their home countries, meaning that death rates among the internally displaced are more than double what would be expected in peacetime. For resident populations trapped in conflict zones but not displaced, the median DRR is 1.51—still substantially elevated but lower than for IDPs. For refugees, however, the median DRR is 0.94, not significantly different from

baseline mortality in their host countries. This suggests that, at least in the contexts captured by the CEDAT data, refugees experience mortality rates comparable to those of the host populations, while IDPs and residents suffer enormous excess deaths.

Together, these three studies challenge several persistent misconceptions about forced displacement. They show that displacement is not a homogeneous experience but one that varies dramatically depending on legal status, geographic location, the nature of the conflict, and the policies of host states. They demonstrate that internal displacement is often not an accident of war but a strategic outcome, deliberately produced by armed actors to reshape the demographic and political landscape. And they reveal that refugees, for all their vulnerability, may sometimes fare better than those who remain inside conflict zones—a finding that raises difficult questions about the efficacy of humanitarian assistance, the politics of refugee protection, and the moral calculus of flight versus staying.

This chapter proceeds in three main sections, each dedicated to one of the studies. The first examines the phenomenology and determinants of loneliness among refugees, situating Hajji's findings within the broader literature on post-migration stress and mental health. The second analyzes the strategic use of internal displacement in the Syrian Civil War, tracing the evolution of regime tactics and their long-term demographic consequences. The third quantifies excess mortality across displacement categories, exploring the implications of the finding that refugees have lower mortality than IDPs. The conclusion synthesizes these insights and considers their implications for humanitarian policy, international law, and the protection of civilian populations in contemporary armed conflicts.

4.2 The Loneliness of Refugees: A Study of Psychological Distress in Germany

4.2.1 The Concept of Loneliness and Its Distinctiveness from Social Isolation

Loneliness is a subjective, negative emotional state that arises when an individual perceives a discrepancy between their desired and

actual social relationships. It is distinct from social isolation, which is an objective measure of the number of social contacts a person has. As Hajji notes, people can feel lonely even when they are surrounded by others if those relationships are not perceived as fulfilling, and conversely, they can be objectively isolated without experiencing loneliness. This distinction is crucial for understanding the psychological experience of refugees, who often find themselves in new social environments where language barriers, cultural differences, and the trauma of displacement impede the formation of meaningful connections.

The prevalence of loneliness among refugees is alarmingly high. In Hajji's sample of 4,465 refugees surveyed in Germany between 2016 and 2017, 27 percent reported feeling lonely (very often or often), compared to approximately 15 percent of the general German population. This figure is consistent with earlier studies by Löbel and colleagues, who found that about 30 percent of refugees in Germany experience loneliness. The elevated prevalence is not surprising given the multiple disruptions that refugees face: leaving their country of origin, often due to war or persecution; losing family members, friends, and social networks; enduring dangerous journeys; and then navigating an unfamiliar legal and social system in the host country.

But Hajji's contribution lies not merely in documenting this prevalence but in explaining it. He extends the existing literature, which has focused primarily on flight conditions and host country conditions, by incorporating selected personality traits—anxiety, internal and external control beliefs, and positive and negative reciprocity—as potential determinants of loneliness. This move recognizes that psychological outcomes are not purely a function of external circumstances but are mediated by the internal resources and dispositions that individuals bring to those circumstances.

4.2.2 Data and Methods: The IAB-BAMF-SOEP Survey

Hajji's study is a secondary analysis of the IAB-BAMF-SOEP survey of refugees, a large-scale panel study conducted by the Institute for Employment Research (IAB), the Federal Office for Migration and Refugees (BAMF), and the German Socio-Economic Panel (SOEP). The survey drew on a sample from the Central Register of Foreigners of refugees who came to Germany between 2013 and

2016, regardless of their residence status. Face-to-face interviews were conducted in English, Arabic, Farsi, and Pashto, among other languages. The response rate was 48.7 percent, yielding data from 4,465 respondents.

The sample is predominantly male (62.1 percent), with an average age of 33.4 years. More than half (51.4 percent) have a school-leaving qualification; 17 percent hold a university degree; and 26.7 percent have no school-leaving qualification. The majority (69 percent) are Muslim; 14.6 percent are Christian; and 6.3 percent are non-religious. Thirty-two percent live in shared accommodation. The vast majority (89 percent) are unemployed, and 54 percent have a residence or permanent residence permit. The three most common countries of origin are Syria (49 percent), Iraq (12.9 percent), and Afghanistan (12.8 percent).

Loneliness was measured using the UCLA Loneliness Scale (Version 3), a well-validated instrument that asks respondents to rate the frequency with which they experience feelings such as "How often do you feel that you lack companionship?" and "How often do you feel isolated from others?" Responses are recorded on a three-point scale (never, occasionally, very often). Hajji operationalized loneliness as a continuous variable in the regression analysis, but for descriptive purposes, he presents the distribution across three categories: (almost) never lonely, occasionally lonely, and (very) often lonely.

Flight conditions were measured using a set of binary indicators for traumatic experiences during the journey to Germany: fraud, sexual harassment, physical assault, shipwreck, robbery, blackmail, and prison stay. Respondents were also asked whether they fled alone or with others, and about their motives for fleeing (Germany's attractiveness, family/friends in Germany, fear of war, fear of persecution/forced recruitment). Host country conditions included housing type (shared accommodation versus private flat), household composition (living with partner, living with children), employment status, utilization of counseling and language courses, perceived welcome culture, and experiences of discrimination. Personality traits were measured using validated scales for anxiety (from the Patient Health Questionnaire, PHQ), internal and external locus of control (from the German Socio-Economic Panel), and positive and negative reciprocity (from the Personal Norm of Reciprocity scale).

4.2.3 Findings: The Bivariate Associations

The bivariate results reveal a consistent and statistically significant pattern. Refugees who reported feeling (very) often lonely had higher levels of anxiety (mean 1.25 on a 0–3 scale) than those who never felt lonely (mean 0.46). They had lower internal locus of control (mean 5.30 versus 5.61 on a 1–7 scale) and higher external locus of control (mean 4.30 versus 3.73). Negative reciprocity—the tendency to retaliate against perceived slights—was higher among the lonely (mean 2.15 versus 1.64), while positive reciprocity showed a smaller difference (6.62 versus 6.68). All these differences were statistically significant at $p < 0.001$ or $p < 0.01$.

Turning to host country conditions, the bivariate associations are striking. Fifty-eight percent of those who felt (very) often lonely lived in shared accommodation, compared to only 36 percent of those who never felt lonely (Cramer's $V = 0.16$, $p < 0.001$). Conversely, 50 percent of those who never felt lonely lived with a partner, compared to only 30 percent of those who felt very often lonely (Cramer's $V = 0.15$, $p < 0.001$). Employment status also differed: only 9 percent of the very often lonely were employed, compared to 14 percent of the never lonely ($p < 0.001$). Utilization of counseling and language courses was lower among the lonely (52 percent) than among the never lonely (68 percent). Perceived welcome culture (measured on a 1–5 scale) was significantly lower among the lonely (mean 4.01 versus 4.61), and experiences of discrimination were higher (mean 1.77 versus 1.34). All these differences were highly significant.

Flight conditions also showed clear associations. Fifty percent of those who felt very often lonely had fled alone, compared to only 33 percent of those who never felt lonely (Cramer's $V = 0.12$, $p < 0.001$). Traumatic experiences—sexual harassment, physical assault, blackmail, and prison stay—were all significantly more common among the lonely, though fraud, shipwreck, and robbery were not. Motives for fleeing also mattered: refugees who came to Germany because of family or friends had lower loneliness ($p < 0.01$), while those who fled because of fear of persecution or forced recruitment had higher loneliness ($p < 0.01$).

4.2.4 Multivariate Findings: Personality Traits, Flight Conditions, and Host Country Conditions

The multivariate linear regression analysis, which controls for a wide range of sociodemographic variables (age, gender, marital status, number of children, duration of stay in Germany, monthly net income, school-leaving certificate, nationality), confirms that the bivariate associations largely persist when other factors are held constant.

Among personality traits, anxiety remains a strong predictor of loneliness: a one-unit increase on the 0–3 anxiety scale is associated with a 0.31 increase in loneliness ($p < 0.001$). External locus of control is also positively associated with loneliness (coefficient 0.07, $p < 0.001$), while internal locus of control is negatively associated (coefficient -0.05, $p < 0.01$). Negative reciprocity remains significant (coefficient 0.04, $p < 0.001$), but positive reciprocity drops out of significance, suggesting that it is the tendency to focus on and retaliate against negative interpersonal experiences—not the tendency to reward positive ones—that drives the association with loneliness.

Host country conditions that remain significant in the multivariate model include living in shared accommodation (coefficient 0.14, $p < 0.001$), living with a partner (coefficient -0.10, $p < 0.01$), utilizing counseling and language courses (coefficient -0.08, $p < 0.05$), perceived welcome culture (coefficient -0.09, $p < 0.001$), and experiences of discrimination (coefficient 0.22, $p < 0.001$). Employment status, residence status, and living with children are not significant, which contrasts with the bivariate results and suggests that these associations are confounded by other variables.

Flight conditions that remain significant include fleeing alone (coefficient 0.19, $p < 0.001$), experiencing sexual harassment (coefficient 0.25, $p < 0.05$), physical assault (coefficient 0.20, $p < 0.001$), and blackmail (coefficient 0.17, $p < 0.001$). Motives for fleeing also matter: coming to Germany because of family or friends is associated with lower loneliness (coefficient -0.05, $p < 0.01$), while fear of persecution or forced recruitment is associated with higher loneliness (coefficient 0.03, $p < 0.05$). The model explains a substantial proportion of variance in loneliness (R-squared = 0.315).

4.2.5 Interpretation and Implications

Hajji's findings have several important implications for understanding and addressing loneliness among refugees. First, they confirm that loneliness is not merely a byproduct of the flight experience but is shaped by the conditions that refugees encounter in host countries. Shared accommodation, which is often the default housing arrangement for newly arrived refugees, is associated with higher loneliness—presumably because it lacks privacy and may be characterized by high turnover and limited opportunities for meaningful social interaction. Living with a partner, by contrast, provides a built-in source of social support. These findings suggest that housing policies matter: providing refugees with stable, private accommodation may reduce loneliness more effectively than congregate settings.

Second, the significance of perceived welcome culture and experiences of discrimination highlights the role of the host society in shaping refugee mental health. Refugees who feel unwelcome or who experience discrimination are more lonely, even after controlling for other factors. This finding is consistent with a large literature on the health effects of discrimination and underscores the importance of anti-discrimination policies, community engagement, and public education campaigns that promote tolerance and inclusion.

Third, the significance of personality traits—particularly anxiety and control beliefs—suggests that interventions targeting psychological resources may be effective. Cognitive-behavioral approaches that help refugees manage anxiety and develop internal control beliefs could reduce loneliness, though such interventions would need to be culturally adapted and accessible to populations that may be reluctant to seek mental health services. The finding that negative reciprocity is associated with loneliness is particularly intriguing: it suggests that refugees who are prone to retaliate against perceived slights may struggle to form the trusting, cooperative relationships that alleviate loneliness. Interventions that address maladaptive interpersonal schemas could be beneficial.

Fourth, the significance of flight conditions—fleeing alone, experiencing sexual harassment, physical assault, and blackmail—indicates that the trauma of displacement does not end when refugees reach their destination. These experiences may erode trust in others, making it harder to form new social bonds. Moreover, they may have lasting effects on mental health that require

specialized psychotherapeutic treatment. The fact that these associations remain significant even after controlling for anxiety suggests that traumatic experiences have effects beyond their contribution to anxiety symptoms.

Finally, the finding that refugees who came to Germany because of family or friends have lower loneliness points to the protective effect of pre-existing social networks. Refugees who have relatives or friends in the host country can draw on these connections for emotional support, practical assistance, and social integration. This suggests that family reunification policies are not merely a matter of humanitarian obligation but also a cost-effective mental health intervention.

Hajji's study has limitations. The cross-sectional design means that causality cannot be inferred: loneliness may exacerbate anxiety, for example, rather than the reverse. The data are self-reported and may be subject to recall bias. The sample, while large, is not necessarily representative of all refugees in Germany, as it excludes those who were not in the Central Register of Foreigners. Moreover, the study focuses on refugees who arrived between 2013 and 2016, a period of relatively high political support for refugee reception in Germany. The findings might differ for refugees who arrived later, when public sentiment had shifted. Nevertheless, the study provides robust evidence that loneliness among refugees is widespread and multifactorial, and that effective interventions must address not only the trauma of flight but also the conditions of reception and the psychological resources of refugees themselves.

4.3 Internal Displacement as Strategy: The Syrian Regime's War on Its Own People

4.3.1 Recognizing Displacement as Deliberate Strategy

For many years, international observers understood internal displacement as a tragic but largely unintended consequence of armed conflict. Civilians fled because they were caught in the crossfire, not because they were deliberately targeted for expulsion. This framing, however, has increasingly come under challenge. Scholars such as Stathis Kalyvas, Abbey Steele, and Adam

Lichtenheld have shown that armed actors in civil wars often use displacement as a strategic tool—to deprive insurgents of civilian support, to consolidate territorial control, to punish disloyal populations, and to reshape the demographic composition of contested areas. The Syrian Civil War, which began in 2011, provides one of the most stark and brutal examples of this phenomenon.

Bakkour and Sahtout's article is a meticulous documentation of how the Assad regime has used internal displacement not as an incidental byproduct of its military operations but as a central component of its integrated military-political strategy. Drawing on reports from the UN, the Internal Displacement Monitoring Centre, the Syrian Association for Citizens' Dignity, and numerous activist and research organizations, they trace the evolution of regime tactics from early massacres to systematic siege warfare to the so-called "reconciliation agreements" that have forcibly evacuated entire populations.

By the end of 2023, Syria had the largest number of internally displaced persons in the world: 6.6 million, according to the IDMC. An additional 5.7 million Syrians had fled the country as refugees, primarily to neighboring Turkey, Lebanon, Jordan, and Iraq. The regime has made it clear that displaced persons who seek to return will face screening of their civil registration and property claims, and that steadfast opponents will be denied entry. This is not a humanitarian protection failure; it is a deliberate policy of demographic engineering.

4.3.2 The Evolution of Regime Tactics: From Massacres to Sieges

In the early stages of the uprising, the regime relied on brute force—massacres committed by the shabiha (pro-regime militias) designed to terrorize populations into submission. The Karm al-Zaytoun massacre (March 9–11, 2012), in which 47 civilians were murdered and their bodies mutilated, and the Houla massacre (May 25, 2012), in which 108 civilians—including 39 children and 32 women—were killed, were not isolated atrocities but part of a pattern. The international community condemned these acts, but the regime persisted, understanding that terror could compel flight. As one survey cited by Bakkour and Sahtout found, 36 percent of

displaced persons cited bombing as the most important factor in their displacement.

The regime soon recognized that siege warfare was a more resource-efficient method of displacement. Sieges required fewer troops and less ammunition than direct assaults, and they could be combined with intermittent bombardment to maximize terror while minimizing regime casualties. The siege of Eastern Aleppo (July–December 2016) is the most infamous example. Between 250,000 and 275,000 civilians were trapped in the besieged area, subjected to aerial bombardment and artillery shelling, and denied access to food, water, and medicine. After four months, the population dwindled to approximately 30,449 families, many of whom were evacuated to Idlib governorate under a Russia-brokered agreement.

Zabadani, a town in rural Damascus with a pre-war population of more than 25,000, was subjected to a severe siege beginning in January 2012. By mid-2014, almost four-fifths of its buildings had been destroyed, and the vast majority of residents had been displaced. Under a truce agreement in April 2015, the remaining residents were evacuated, with many sent to Idlib. In Zabadani and nearby Madaya, Iran used internal displacement agreements to replace former Sunni residents with Shiite fighters and families evacuated from the Shiite-majority towns of Kafarya and al-Fu'ah in Idlib province. This was not merely a military operation but a sectarian demographic re-engineering.

Siege warfare was often accompanied by starvation. The regime deliberately blocked the entry of electricity, fuel, medicine, and water to besieged areas, forcing residents to eat weeds and rodents. Up to 2.5 million Syrians experienced starvation at different points in the war, with the most extensive use of starvation occurring in rural Damascus, particularly in Zabadani and Madaya. Malnutrition and dehydration led to a significant rise in fatalities caused by hunger and disease. The regime calculated that starving residents would pressure rebels to surrender, obviating the need for direct assault.

4.3.3 "Reconciliation Agreements": Evacuation as Coerced Displacement

Beginning in 2015, the regime increasingly relied on so-called "reconciliation agreements" to end opposition control of urban

areas. These agreements were euphemisms for surrender: opposition fighters and civilians were given the choice of accepting regime rule or being evacuated to opposition-held areas, primarily Idlib. In practice, the terms were coercive, and those who chose to stay were subjected to regime screening, conscription, and the confiscation of property.

The final four towns' deal of late March 2017 removed the opposition's final urban center in western Qalamoun, enabling the regime, Russia, and Iran to expand their influence in the center of the country. Under a different arrangement, 1,500 ISIS fighters were transported in 25 buses and 30 trucks from Al-Hajar al-Aswad (southern Damascus) to the Syrian Badia near As-Suwayda governorate, resulting in the regime's complete control of the capital for the first time since 2012.

In December 2016, through a Russia-opposition agreement, the remaining residents of East Aleppo were evacuated and dispersed to the countryside west of the city and Idlib governorate. This allowed the regime to remove persistent opponents and, crucially, to conscript Sunni men into the army. Over 4,000 Sunni men who crossed from East to West Aleppo in December 2016 were conscripted and sent to the front lines with minimal training. The regime thus transformed displacement into a recruitment opportunity.

The "reconciliation agreements" were not ad hoc improvisations but part of a coherent strategy of political territorialization. As Lichtenheld has argued, displacement can serve as an "assortative mechanism" that sorts populations by presumed loyalty. Those who flee to regime-controlled areas are deemed loyal; those who remain in opposition-held areas or flee to Idlib are deemed disloyal. This sorting is then reinforced by legal and administrative barriers to return.

4.3.4 Demographic Engineering and the Construction of "Useful Syria"

The long-term goal of the regime's displacement strategy is the construction of a "Useful Syria"—a rump state comprising the economically and politically essential areas of the country, populated by loyalists, and purged of dissenting populations. This is not merely a military objective but a vision of a new social and

political order.

The legal infrastructure for this demographic engineering is extensive. Laws enacted in 2012—Law No. 19, Law No. 22, and Decree 23—empower the state to confiscate the assets of its adversaries and transfer them into state possession. Laws No. 66 and 40 give the regime the authority to revamp old structures, effectively enabling the demolition of opposition-held neighborhoods. Law No. 23 (2015) empowers the regime to appropriate property without providing compensation, departing from the previous practice of paying less than market value.

These laws are not merely abstract legal provisions; they have been actively enforced. In Yarmouk Camp, which suffered extensive destruction, the regime has actively prevented reconstruction, citing unremoved rubble, the continued presence of explosives, and a lack of housing capacity. Residents who fled are barred from returning unless they obtain security approval, possess a reconciliation document, and agree to temporary accommodation elsewhere. In Barzeh, property has been repossessed by the state when owners failed to establish ownership. In Qaboun, the Industrial Plan (citing Law 104 of 2019) proposes transforming the area into residential and commercial towers—a project that would permanently displace the former inhabitants.

The regime's displacement strategy is thus not only about winning the war but about winning the peace. By emptying strategically important areas of opposition supporters, destroying their homes, and repopulating those areas with loyalists, the regime is creating a post-conflict demographic reality that will make a political settlement based on power-sharing or federalism virtually impossible. The displaced are not expected to return; they are expected to remain in exile, either in Idlib, in Turkey, or in the diaspora.

4.3.5 The International Response and Its Limitations

The international response to internal displacement in Syria has been characterized by a persistent tendency to view displacement as a protection challenge rather than a strategic outcome. Humanitarian agencies focus on providing assistance to IDPs—food, shelter, medical care, psychosocial support—but they have been less effective in challenging the root causes of displacement. The UN

Commission of Inquiry on Syria has characterized the regime's displacement activities as war crimes and crimes against humanity, but the Security Council has been paralyzed by Russian and Chinese vetoes. The result is a regime that has enjoyed impunity for its displacement strategy, and that has learned that such strategies are effective and cost little in terms of international accountability.

Bakkour and Sahtout argue that this framing of displacement as a protection failure is not merely descriptively inaccurate but also politically counterproductive. It obscures the agency of the regime, making it harder to design effective countermeasures. It also shifts responsibility away from the regime and onto the international community, which is then faulted for its inadequate protection response. A more accurate framing—displacement as a deliberate strategy of demographic engineering—would require a different kind of response: sanctions against regime officials involved in planning and implementing displacement, legal proceedings at the International Criminal Court, and support for local governance structures in areas under opposition control.

The Syrian case also challenges the counterinsurgency orthodoxy that violence against civilians is counterproductive because it alienates the population. The Assad regime has been extraordinarily violent, and yet it has not collapsed. On the contrary, it has regained control over most of the country. This suggests that the calculus of violence in civil war is more complex than the "hearts and minds" literature allows. When the alternative to regime victory is not a negotiated settlement but a complete loss of power, and when the regime's external backers (Russia, Iran) are willing to absorb the costs of a protracted conflict, indiscriminate violence may be a rational—if monstrously immoral—strategy.

4.3.6 Implications for Post-Conflict Reconstruction and Reconciliation

The long-term implications of the regime's displacement strategy are profound. The return of IDPs is widely recognized as a central pillar of post-conflict peacebuilding: without the ability to return to their homes, recover their property, and rebuild their lives, displaced populations have little incentive to support a political settlement. The regime, however, has made clear that it does not want most IDPs to return. Those who do return face a labyrinth of

administrative obstacles, the loss of their property, and the risk of conscription or arrest.

This creates a paradox for international peacebuilding efforts. Standard models of post-conflict reconstruction assume that the displaced will return and that their return will be facilitated by the state. In Syria, the state is the agent of displacement, not the guarantor of return. International actors therefore face a choice: they can continue to work within the framework of the existing regime, accepting its demographic engineering as a fait accompli and focusing on humanitarian assistance for the displaced; or they can challenge the regime's strategy, supporting alternatives to return such as local integration in host countries (including Turkey, Lebanon, and Jordan) or resettlement in third countries. Neither option is attractive. The first requires accepting an unjust status quo; the second risks legitimizing permanent displacement and the erasure of Syria's pre-war social fabric.

The Syrian case thus illustrates a broader lesson: internal displacement is not only a humanitarian crisis but also a political and legal one. It challenges the foundational assumption of the international refugee regime—that displacement is a temporary condition that ends with return—and forces a reckoning with the possibility that some displacement is permanent by design.

4.4 Excess Mortality in Complex Humanitarian Emergencies: Comparing Refugees, IDPs, and Residents

4.4.1 The Challenge of Quantifying Mortality in Conflict Zones

Measuring mortality in complex humanitarian emergencies is notoriously difficult. Standard demographic surveillance systems—censuses, vital registration, demographic and health surveys—are often unavailable or unreliable in conflict-affected areas. Security concerns prevent surveyors from accessing certain regions, and governments may have incentives to underreport deaths or to exclude conflict-affected populations from sampling frames. The Demographic and Health Survey in Colombia (2010), for example, deliberately replaced conflict-affected enumeration areas with non-

affected ones, rendering the survey unrepresentative of the population living in conflict zones. Similarly, the DHS Ethiopia (2011) was unable to visit randomly selected enumeration areas in the Somali region due to security concerns.

In response to these challenges, humanitarian aid agencies have developed their own data collection systems. They conduct small-scale mortality and nutrition surveys in the areas where they operate, using standardized methods (retrospective household interviews, cluster sampling) to estimate crude death rates, under-five death rates, and nutrition indicators. These surveys are not designed for epidemiological research; they are operational tools for planning, monitoring, and evaluating humanitarian interventions. But when aggregated, they can provide insights into mortality patterns that are unavailable from any other source.

The Complex Emergency Database (CEDAT), established in 2003 by the Centre for Research on the Epidemiology of Disasters (CRED) at the Université Catholique de Louvain, is a multi-agency initiative that centralizes and consolidates these survey data. CEDAT contains data from more than 40 different humanitarian organizations, covering 54 countries and territories between 1998 and the present. As of the time of Heudtlass and colleagues' analysis, CEDAT included 4,498 mortality estimates for different age groups. The authors extracted 2,072 crude death rate (CDR) estimates from assessments conducted between 1998 and 2012, of which 1,759 were for populations classified as residents (non-displaced), IDPs, or refugees.

4.4.2 Defining Excess Mortality and Baseline Comparisons

The concept of excess mortality in humanitarian emergencies is based on the idea that there is a baseline level of mortality—the death rate that would be expected in the absence of the emergency—and that any mortality above that baseline is attributable to the emergency. Measuring excess mortality requires a counterfactual: what would the death rate have been if the conflict had not occurred?

Heudtlass and colleagues use as baseline the crude death rate reported in the World Bank's World Development Indicators (WDI) for the same country and year as the emergency assessment. This is

a conservative approach, for two reasons. First, the WDI data are likely to include at least some conflict-affected populations, so the baseline may already be elevated relative to a true counterfactual. This would lead to an underestimation of excess mortality, biasing the results toward the null. Second, CDRs are not age-standardized, so differences in age structure between the survey population and the national population could affect the comparison. However, the authors argue that any bias from age structure is likely to be small relative to the magnitude of the mortality increases observed in emergencies.

The authors calculate the death rate ratio (DRR) as the CDR from the emergency assessment divided by the WDI baseline CDR for the same country and year. A DRR of 1 indicates that emergency mortality equals baseline mortality; a DRR greater than 1 indicates excess mortality; a DRR less than 1 indicates that emergency mortality is lower than baseline (which could occur if the survey population is healthier or younger than the national average, or if the baseline includes populations that are not affected by the conflict).

4.4.3 Results: IDPs Have the Highest Excess Mortality, Refugees the Lowest

The results are striking and consistent across multiple analytical approaches. For resident (non-displaced) populations, the median DRR is 1.51 (95% CI: 1.47–1.58). This means that in more than half of the surveys of resident populations, the death rate was at least 51 percent higher than the baseline. Put differently, resident populations in complex humanitarian emergencies experience a substantial elevation in mortality risk.

For IDPs, the median DRR is 2.5 (95% CI: 2.2–2.93). This means that the typical IDP population has a death rate two and a half times higher than the baseline. The interquartile range is wide, indicating substantial heterogeneity across contexts, but the central tendency is unmistakable: IDPs are at dramatically elevated risk of death.

For refugees, the median DRR is 0.94 (95% CI: 0.73–1.1). This is not significantly different from 1, meaning that, on average, refugee populations in the CEDAT data have mortality rates that are indistinguishable from the baseline mortality of their host countries.

In other words, refugees do not experience excess mortality relative to the host population.

The Kruskal-Wallis test confirms that the distributions of DRRs across the three groups are not the same (chi-squared = 122.7, df = 2, $p < 0.001$). Pairwise Wilcoxon rank-sum tests show that all differences between groups are statistically significant: residents vs. refugees ($p < 0.001$), residents vs. IDPs ($p < 0.001$), and IDPs vs. refugees ($p < 0.001$).

The authors also conduct sensitivity analyses restricted to the six countries for which they have data on all three population groups (Chad, Democratic Republic of the Congo, Ethiopia, Kenya, Liberia, and Uganda). In each of these countries, the pattern is similar to the overall pattern: IDPs have the highest excess mortality, followed by residents, with refugees having the lowest. The small number of observations in some of these country-specific analyses limits statistical power, but the consistency of the pattern across contexts is striking.

4.4.4 Explaining the Pattern: Why Do Refugees Fare Better?

The finding that refugees do not experience excess mortality relative to host populations is surprising. One might expect that refugees, having fled violence and often living in crowded camps with limited access to food, water, and health care, would have higher mortality than the host population. The fact that they do not suggests several possible explanations.

First, the healthy migrant effect: refugees are not a random sample of the population of their country of origin. Those who are able to undertake the journey to another country may be healthier, younger, and more resourceful than those who remain behind or become internally displaced. This selection effect could explain why refugee mortality is lower than IDP mortality and similar to host country mortality.

Second, the availability of humanitarian assistance: refugees are the focus of an extensive international protection regime, led by UNHCR. They are often settled in camps or urban areas where humanitarian agencies provide food, water, shelter, and health care. IDPs, by contrast, often live among the host population in conflict zones, where access to humanitarian assistance is more limited and

where they may be targeted by armed actors. Residents trapped in conflict zones may have no access to humanitarian assistance at all.

Third, the comparator: the baseline mortality in host countries (often lower-income countries in sub-Saharan Africa and the Middle East) is much higher than baseline mortality in high-income countries. A DRR of 0.94 means that refugee mortality is 94 percent of host country mortality. In absolute terms, this could still be a high death rate if the host country has high baseline mortality. The authors do not report absolute CDRs, so it is possible that refugees are dying at rates that would be considered unacceptable in a high-income country, but that are comparable to the rates experienced by the host population.

Fourth, the data limitations: the CEDAT database may not include surveys from the most severe refugee emergencies, or the surveys may be conducted in refugee camps that receive substantial humanitarian assistance, while refugees living outside camps (who may have worse outcomes) are underrepresented. The authors acknowledge that the generalizability of their findings is limited by the fact that most of the data come from large humanitarian catastrophes in Sudan, Somalia, DRC, and Ethiopia in the mid- to late 2000s. More recent crises—Syria, Yemen, Gaza—are not well represented in the data.

4.4.5 Implications for Humanitarian Policy and Resource Allocation

The finding that IDPs have the highest excess mortality has important implications for humanitarian policy. IDPs are often harder to reach than refugees, because they remain in conflict zones that may be inaccessible to humanitarian agencies. They may be living among the host population rather than in camps, making them less visible and harder to count. They are not protected by a dedicated international agency in the same way that refugees are protected by UNHCR. The Internal Displacement Monitoring Centre (IDMC) tracks IDP numbers, but it has no operational mandate. This institutional gap may help explain why IDPs have worse health outcomes.

The authors argue that “an enormous number of lives could be saved if mortality could be brought down to baseline levels in IDP and resident populations.” This is not hyperbole. If the median DRR

for IDPs is 2.5, then reducing IDP mortality to baseline would reduce deaths by 60 percent (since $1 - 1/2.5 = 0.6$). For residents, reducing mortality to baseline would reduce deaths by 34 percent. Given the large number of people affected—tens of millions—the potential life-saving impact is enormous.

Yet humanitarian funding does not always follow need. Refugee operations are often better funded than IDP operations, because refugees are more politically salient (they cross borders and may affect the politics of host countries) and because they are the focus of a powerful international regime. IDPs, by contrast, are "internal" to a single country and may be ignored by the international community if the government of that country is unwilling to accept international assistance. The finding that IDPs have higher excess mortality than refugees suggests that humanitarian funding should be reallocated toward IDP populations, and that the international community should develop a stronger institutional framework for IDP protection.

The study also raises questions about the morality of flight versus staying. Refugees are often criticized for "abandoning" their countries, and host countries sometimes resent the burden of refugee reception. But if refugees have lower mortality than IDPs, then flight may be a rational survival strategy. This does not absolve host countries of their obligations under international law, but it does complicate the narrative that refugees are simply "economic migrants" who choose to leave for better opportunities. In many cases, leaving is a matter of life and death.

4.5 Conclusion: The Politics and Psychologies of Forced Displacement

The three studies examined in this chapter, though differing in method and focus, converge on a common theme: forced displacement is not a homogeneous experience but a complex social and political phenomenon shaped by the interaction of individual psychology, host country policies, and armed actor strategies. Refugees and IDPs are not passive victims; they are agents who make choices about where to go, whom to trust, and how to cope with adversity. But their agency is constrained by the conditions they encounter: the trauma of flight, the availability of housing and language courses, the welcome (or hostility) of host communities,

and the strategic calculations of armed actors who may see displacement as a tool of war rather than an unintended consequence.

Hajji's study of loneliness among refugees in Germany reminds us that displacement is not only a physical journey but a psychological one. The loss of social networks, the uncertainty of legal status, the stress of navigating a new culture, and the internalization of negative experiences can produce profound feelings of isolation and despair. Yet these outcomes are not inevitable. They can be mitigated by policies that provide stable housing, facilitate family reunification, offer language and counseling services, and combat discrimination. They can also be mitigated by interventions that strengthen refugees' internal control beliefs and reduce anxiety. The fact that personality traits explain a substantial portion of the variance in loneliness suggests that psychological interventions could be effective, but it also raises the uncomfortable question of whether we are asking refugees to adapt to conditions that should be changed.

Bakkour and Sahtout's analysis of internal displacement in Syria exposes the dark underside of strategic displacement. When armed actors use displacement as a tool of war, humanitarian assistance becomes not a solution but a bandage. The regime's deliberate targeting of civilians, its use of siege and starvation, its "reconciliation agreements" that forcibly evacuate populations, and its legal apparatus for property confiscation all point to a strategy that seeks not merely military victory but demographic transformation. The international community's response—framing displacement as a protection failure rather than a strategic outcome—has been inadequate. It has allowed the regime to operate with impunity and has left millions of Syrians in a permanent state of displacement, with little prospect of return.

Heudtlass and colleagues' quantitative analysis of excess mortality provides a macro-level perspective that confirms the urgency of the crisis. IDPs experience the highest excess mortality, followed by resident populations, while refugees fare better. This finding challenges the assumption that refugees are the most vulnerable population and suggests that humanitarian resources may be misallocated. It also raises important questions about the healthy migrant effect, the effectiveness of refugee protection regimes, and the ethics of flight versus staying.

Together, these studies call for a rethinking of the international response to forced displacement. The current regime—built around the 1951 Refugee Convention, the Guiding Principles on Internal Displacement, and the institutional mandates of UNHCR and IDMC—was designed for a different era. It assumes that displacement is temporary, that refugees will return when conditions permit, and that states will comply with their obligations to protect displaced persons. In the Syrian case, none of these assumptions holds. Displacement is likely to be permanent for many; return is actively obstructed by the regime; and the international community is divided and ineffective.

What is needed is a new framework that recognizes forced displacement as a strategic outcome of contemporary armed conflict, not an incidental side effect. This framework would prioritize the prevention of displacement—through early warning systems, diplomatic pressure, and targeted sanctions—over the provision of humanitarian assistance after displacement has occurred. It would strengthen the legal and institutional protection of IDPs, closing the gap between refugee and IDP protection regimes. And it would confront the uncomfortable truth that some displacement is permanent, requiring durable solutions that go beyond return to include local integration and resettlement.

The dispossessed are not statistics. They are the Syrian mother who watched her child die of starvation in a besieged suburb of Damascus; the Afghan teenager who fled alone to Germany and now spends her nights scrolling through social media, searching for connection; the Congolese farmer who was forced from his village by militias and now lives in a displacement camp where the death rate is two and a half times the national average. They are the reason why international humanitarian law exists—and why it so often fails. The studies examined in this chapter show us both the scale of that failure and the pathways toward a more just and effective response. Whether we will take those pathways is a question not of capacity but of will

Chapter 5: Digital Battlefields, Autonomous Weapons, and the Fragile Future of International Humanitarian Law

5.1 Introduction: The Algorithmic Turn in Armed Conflict

The history of warfare is, in significant part, the history of technological change. The longbow at Crécy, the cannon at Constantinople, the machine gun on the Somme, the atomic bomb at Hiroshima—each new weapon system has forced a recalibration of military strategy, tactical doctrine, and, eventually, the legal rules that seek to constrain the worst excesses of armed violence. International humanitarian law has never been static. It has evolved in response to the horrors that new technologies have enabled: the 1868 St. Petersburg Declaration prohibiting explosive projectiles under 400 grams, the 1899 Hague Declaration banning expanding bullets, the 1925 Geneva Protocol prohibiting chemical and biological weapons, and the more recent conventions on anti-personnel mines (1997) and cluster munitions (2008). In each case, the law has struggled to keep pace with innovation, often responding only after catastrophic suffering had already occurred.

The current moment is no exception. Yet the technological changes now underway differ from previous revolutions in three fundamental respects. First, they are digital rather than mechanical. The core enabling technologies—artificial intelligence, machine learning, computer vision, natural language processing, autonomous navigation—are software-based and therefore more rapidly iterative, more easily disseminated, and more difficult to verify than the hardware-centric weapons of the past. Second, they blur the distinction between civilian and military domains to an unprecedented degree. The same algorithms that power autonomous vehicles, facial recognition systems, and natural language chatbots can be, and are being, repurposed for military applications. Third, they lower the barrier to participation in armed

conflict. A civilian hacker with a laptop and an internet connection can, from thousands of kilometers away, disrupt the electrical grid, disable a hospital's information systems, or steal sensitive military data. The digitization of warfare has democratized violence in ways that the drafters of the 1949 Geneva Conventions could not have imagined.

This chapter examines two intersecting dimensions of the digital transformation of armed conflict. The first is the phenomenon of civilian hackers—hacktivists, patriotic hackers, volunteer IT armies—who conduct cyber operations in the context of armed conflicts. As Tilman Rodenhäuser documents in his comprehensive analysis, such groups are increasingly active in conflicts from Ukraine to Syria, and their operations raise fundamental questions about the applicability of IHL to civilians who engage in hostilities through digital means. Are these hackers combatants or civilians? When do their operations constitute "attacks" under IHL? What limits does the law impose on their activities? And when are states responsible for the conduct of hackers operating from their territory or under their direction?

The second dimension is the integration of artificial intelligence into military systems, from autonomous drones and unmanned ground vehicles to AI-enhanced command and control, predictive analytics, and cyber defense. As Cummings (2017) and Nazil (2025) demonstrate, the military applications of AI are advancing rapidly, driven not only by defense research and development but also—and increasingly—by the commercial sector. Autonomous systems are already operating in the air, on the ground, and underwater, though most remain under meaningful human control. The prospect of fully autonomous lethal autonomous weapons systems (LAWS)—robots that could select and engage targets without human intervention—has sparked intense ethical, legal, and strategic debate. The International Committee of the Red Cross has called for new international rules to ensure that such systems remain under human control. States are divided. And the commercial-military technology gap is widening, with implications that are only beginning to be understood.

The chapter proceeds in three main parts. The first part, drawing on Rodenhäuser's analysis, examines the legal framework applicable to civilian hackers in armed conflict. It addresses the threshold question of when IHL applies to cyber operations, analyzes the eight

rules that the ICRC has articulated for civilian hackers, and explores the status of hackers under IHL—whether they qualify as combatants, civilians directly participating in hostilities, or something else. The second part, drawing on Cummings and Nazil, examines the integration of AI into military systems, with particular attention to the capabilities and limitations of current AI, the distinction between automated and autonomous systems, the ethical and legal challenges posed by LAWS, and the shifting locus of AI expertise from defense to commercial sectors. The third part synthesizes these analyses to identify common themes and challenges: the erosion of the combatant-civilian distinction, the difficulty of applying traditional IHL concepts (attack, direct participation in hostilities, proportionality, precaution) to digital operations, the accountability gap created by autonomous systems and decentralized hacker networks, and the implications of the commercialization of military technology for international security and humanitarian protection.

The conclusion argues that the digital transformation of armed conflict does not require the abandonment of IHL but rather its careful reinterpretation and, in some areas, its extension. The fundamental principles—distinction, proportionality, precaution, humane treatment—remain as relevant as ever. But their application to cyber operations and autonomous systems requires new interpretive guidance, new institutional mechanisms, and, potentially, new treaties. The challenge is urgent. The technologies are already in use. And the window for preventive regulation—for shaping the development of these technologies before they become entrenched—is closing.

5.2 Civilian Hackers in Armed Conflict: The IHL Framework

5.2.1 The Phenomenon: From Hacktivists to IT Armies

The involvement of civilian hackers in armed conflicts is not entirely new. During the 2003 Iraq War, US government agencies warned that “global hacking activities” were likely to increase. In 2008, “patriotic hackers” conducted cyber operations against

Georgian government websites during the Russia-Georgia armed conflict. In 2011, the Syrian Electronic Army emerged as a pro-regime cyber militia. And in 2015, the hacker group Anonymous issued a declaration of war against the so-called Islamic State.

But the scale and sophistication of civilian cyber operations have expanded dramatically with the Russia-Ukraine conflict. The IT Army of Ukraine, established shortly after the February 2022 invasion, presents itself as a "worldwide IT community" with the mission to "help Ukraine win by crippling aggressor economies, blocking vital financial, infrastructural and government services, and tiring major taxpayers." On the other side, the Russian group Killnet has reportedly called for and carried out disruptive attacks on hospital websites in both Ukraine and allied countries. These groups coordinate through social media channels, some with thousands of members. They share targets, tools, and techniques. And their operations range from distributed denial-of-service (DDoS) attacks that temporarily disable websites, to ransomware that encrypts critical data, to "wiper" malware that permanently destroys information.

As Rodenhäuser notes, most of these groups have either non-existent or blurred links to states. They are not formally incorporated into armed forces. They do not wear uniforms or carry arms openly. They operate from civilian infrastructure—homes, cafes, university computer labs—often in countries far from the battlefield. Yet their operations can have significant effects. Hospitals have been disrupted. Pharmacies have been unable to process prescriptions. Railway networks have been paralyzed. And while some dismiss these operations as mere "cyber vigilantism" or low-sophistication nuisance attacks, their impact depends not only on the hackers' skills but on the exposure, cybersecurity posture, and dependencies of the target. A small group of hackers with modest tools can cause catastrophic effects if they successfully target a poorly protected critical infrastructure node.

The involvement of civilians in cyber operations raises a fundamental question for IHL: what rules apply to these actors, and who is responsible for ensuring compliance?

5.2.2 The Threshold Question: When Does IHL Apply to Cyber Operations?

IHL applies only in situations of armed conflict, and only to operations that have a nexus to that conflict. A cyber operation conducted by a civilian hacker for purely personal gain—ransomware attack on a hospital for financial extortion—would not be governed by IHL, even if it occurred in a country at war. It would be a crime, to be prosecuted under domestic law. But if that same ransomware attack was conducted in support of one party to the conflict against another, the legal analysis changes.

The International Criminal Tribunal for the former Yugoslavia, in its *Kunarac* judgment, articulated the nexus requirement for war crimes: an act must have "a substantial/major part in the perpetrator's ability to commit [the act], his decision to commit it, the manner in which it was committed or the purpose for which it was committed." The conjunction "or" is critical: an act need not meet all these criteria to have a nexus to the conflict. If a hacker is motivated by outrage at an adversary's military actions, and that outrage is the determining factor in the decision to conduct a cyber operation, the nexus requirement is satisfied. If a hacker group is established for the purpose of conducting operations against an adversary's military or civilian infrastructure, the nexus is clear. If a state provides hackers with tools, targeting information, or instructions, the nexus is established.

Thus, many of the cyber operations conducted by civilian hackers in the context of contemporary armed conflicts likely fall within the scope of IHL. This conclusion has profound implications. It means that these hackers are bound by IHL rules. And it means that they may be prosecuted for war crimes if they violate those rules.

5.2.3 The Eight Rules: A Concise IHL Framework for Civilian Hackers

Recognizing that many civilian hackers are not familiar with the detailed provisions of the Geneva Conventions and Additional Protocols, the ICRC has published a set of eight rules formulated in accessible language. These rules are not new law; they are restatements of existing IHL obligations, tailored to the kinds of cyber operations that civilian hackers commonly conduct.

Rule 1: Do not direct cyber attacks against civilian objects. This rule reflects the foundational principle of distinction,

codified in Article 48 of Additional Protocol I and customary IHL. Civilian objects—hospitals, schools, homes, civilian infrastructure, cultural property—may not be the object of attack. A cyber operation that causes damage or disruption to a civilian hospital, even if conducted from a remote location, violates this rule.

Rule 2: Do not use malware or other tools or techniques that spread automatically and damage military objectives and civilian objects indiscriminately. This rule prohibits indiscriminate attacks, which are those that do not or cannot distinguish between military objectives and civilian objects. Worms or other self-propagating malware that spread beyond their intended target are inherently indiscriminate. A hacker who releases a worm that cripples a military command center but also spreads to and disables civilian infrastructure has violated this rule.

Rule 3: When planning a cyber attack against a military objective, do everything feasible to avoid or minimize the effects your operation may have on civilians. This rule codifies the precautionary obligation in attack. Before conducting a cyber operation, hackers must verify that the target is a military objective, assess the expected incidental harm to civilians and civilian objects, and take feasible steps to minimize that harm. If it becomes apparent that the target is not military or that the incidental harm will be excessive, the operation must be canceled or suspended.

Rule 4: Do not conduct any cyber operation against medical and humanitarian facilities. Medical units, transports, and personnel are specially protected under IHL. Cyber operations that disrupt hospital information systems, block access to patient records, or disable medical equipment are unlawful. This protection applies even if the operation does not rise to the level of an "attack" under IHL.

Rule 5: Do not conduct any cyber attack against objects indispensable to the survival of the population or that can release dangerous forces. Objects indispensable to the survival of the civilian population—food supplies, drinking water installations, crops, livestock, irrigation works—are protected under IHL. So too are installations containing dangerous forces—dams, dikes, nuclear power plants—whose destruction could cause catastrophic harm to civilians. Cyber operations against these objects are prohibited, even if they are also being used for military purposes.

Rule 6: Do not make threats of violence to spread terror

among the civilian population. IHL prohibits acts or threats of violence whose primary purpose is to spread terror among civilians. Cyber operations that, for example, hack into emergency broadcast systems to threaten imminent attacks would violate this rule.

Rule 7: Do not incite violations of international humanitarian law. Hackers who encourage others to direct cyber attacks against civilian objects, or to use indiscriminate tools, may be held responsible for incitement.

Rule 8: Comply with these rules even if the enemy does not. IHL obligations are non-reciprocal. The fact that an adversary violates IHL does not excuse violations by one's own side.

These rules are legally binding. Violations may constitute war crimes. And the Office of the Prosecutor of the International Criminal Court has announced that it will collect and review evidence of cyber operations that aim "to impact critical infrastructure such as medical facilities or control systems for power generation."

5.2.4 The Status of Civilian Hackers Under IHL: Combatants or Civilians?

The most challenging legal question raised by civilian hackers concerns their status under IHL. Are they combatants, entitled to prisoner-of-war status and the combatant privilege (immunity from prosecution for lawful acts of war)? Or are they civilians, entitled to protection from attack but also subject to prosecution for any act that violates domestic law, even if it complies with IHL?

In international armed conflicts, combatant status is reserved for members of the armed forces of a party to the conflict. State armed forces "consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates." Membership in a state's armed forces is a matter of domestic regulation. Members of a state's military cyber forces—China's People's Liberation Army Cyberspace Force, France's Commandement de la Cyberdéfense, US Cyber Command—are combatants.

Civilian hackers who are not formally incorporated into a state's armed forces could, in theory, qualify as combatants if they are members of "other organized groups and units which are under a command responsible to that party for the conduct of its

subordinates." This requires that the group be organized (i.e., have a collective character, internal hierarchy, and discipline) and that it be effectively subordinated to and responsible to a state party to the conflict. Loose collectives of hackers who coordinate through messaging apps but lack internal hierarchy and discipline would not qualify. A group that is organized and acts on behalf of a state—for example, a private IT company contracted by the military to conduct cyber operations—might qualify, provided its members carry arms openly (in the cyber context, a contested requirement) and distinguish themselves from the civilian population.

If civilian hackers do not qualify as combatants, they are civilians. As civilians, they are protected against direct attack unless and for such time as they directly participate in hostilities. The ICRC's Interpretive Guidance on the Notion of Direct Participation in Hostilities, developed through a decade of expert consultations, articulates three cumulative criteria for determining whether a specific act constitutes direct participation.

First, the act must be likely to adversely affect the military operations or military capacity of a party to the armed conflict, or to inflict death, injury, or destruction on persons or objects protected against direct attack. For cyber operations directed against military objectives, this threshold is relatively low: electronic interference with military computer networks, wiretapping the adversary's high command, transmitting targeting information for an attack—all would likely qualify. For cyber operations directed against civilian objects, the threshold is higher: the operation must be reasonably expected to cause death, injury, or destruction. A DDoS attack that temporarily disables a civilian website would not meet this threshold; a ransomware attack that shuts down a hospital's emergency department would.

Second, there must be a direct causal link between the act and the harm likely to result. The act must be an integral part of a concrete military operation, not merely contributing to the general war effort. Providing tactical targeting information directly to a military unit meets this criterion. Developing malware that might be used in the future does not.

Third, the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another. This "belligerent nexus" criterion excludes acts that are motivated by personal gain, political protest,

or other objectives not linked to supporting one belligerent against another.

If a civilian hacker's operation meets all three criteria, the hacker loses protection from direct attack for such time as they are participating. They may be targeted—by cyber operation, kinetic strike, or other lawful means—provided that all other IHL rules (proportionality, precaution, etc.) are respected. Their computers and digital infrastructure may also become military objectives.

In non-international armed conflicts, the concept of combatant does not exist. There is no combatant privilege. Anyone who participates in hostilities—whether a member of state armed forces or a non-state armed group—may be prosecuted under domestic law for acts that would be lawful if committed by a state soldier in an international armed conflict. Civilian hackers who take part in a non-international armed conflict are civilians who directly participate in hostilities. They lose protection from attack for the duration of their participation, but if captured, they have no entitlement to prisoner-of-war status.

The practical implication is stark: civilian hackers who conduct cyber operations in armed conflicts face significant legal risks. They may be targeted. They may be prosecuted under domestic law for their operations, even if those operations comply with IHL. And they may be prosecuted for war crimes if they violate IHL.

5.2.5 State Responsibility for Civilian Hackers

If a civilian hacker violates IHL, is the state from whose territory the operation was conducted, or the state that the hacker purports to support, legally responsible? The answer depends on the relationship between the hacker and the state.

Under the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), a state is responsible for the conduct of a person or group if that person or group is acting on the instructions of, or under the direction or control of, the state. The standard of control, however, is contested. The International Court of Justice, in the *Nicaragua* case, applied an "effective control" standard: a state is responsible for a non-state actor's conduct only if the state had effective control over the specific operation in which the violation occurred. The International Criminal Tribunal for the former

Yugoslavia, in the *Tadić* case, applied a lower "overall control" standard: a state is responsible if it exercises overall control over a group, including by financing, equipping, coordinating, or helping to plan the group's military actions, even without issuing specific orders for each operation.

The difference matters. Under the effective control standard, a state that provides general encouragement to civilian hackers, or even shares tools and targeting information, would not be responsible for their violations unless it directed the specific operation. Under the overall control standard, such support might suffice for attribution. The ICRC has expressed a preference for the overall control standard in the context of organized armed groups, on the ground that it better reflects the reality of state-non-state actor relationships and provides greater protection for victims.

Even if a state is not directly responsible for a hacker's conduct under ARSIWA, it has a due diligence obligation to prevent and repress IHL violations by persons under its authority. Under Common Article 1 of the Geneva Conventions, states must "respect and ensure respect" for IHL "in all circumstances." The negative dimension of this obligation prohibits states from encouraging, aiding, or assisting IHL violations. The positive dimension requires states to take feasible measures to prevent violations by private persons, including civilian hackers, operating from their territory. Such measures include adopting domestic legislation criminalizing war crimes, prosecuting violators, and taking operational steps to stop ongoing violations.

Thus, states cannot simply look away when civilian hackers on their territory conduct cyber operations that violate IHL. They have a legal obligation to act.

5.3 Artificial Intelligence and the Future of Warfare

5.3.1 Understanding AI: Capabilities and Limitations

Before analyzing the legal implications of AI in armed conflict, it is essential to understand what AI is and, equally important, what it is not. As Cummings (2017) explains in her framework for understanding AI in military contexts, there is a critical distinction

between automated and autonomous systems.

An automated system follows deterministic if-then-else rules. For a given input, the output will always be the same (barring system failure). A thermostat that turns on the heat when the temperature drops below a set point is automated. An autopilot that holds an aircraft on a programmed course is automated. These systems are predictable, verifiable, and relatively easy to test.

An autonomous system reasons probabilistically. It makes guesses about the best possible course of action given sensor data and a world model. When given the same input, an autonomous system will not necessarily produce the same output; it will produce a range of outputs within a probability distribution. A driverless car that must guess whether a pedestrian will step into the street is autonomous. An autonomous drone that must decide whether a tracked object is a military vehicle or a civilian truck is autonomous.

Cummings adapts Rasmussen's skill-rule-knowledge taxonomy to explain the cognitive continuum. Skills-based behaviors are sensory-motor actions that become highly automatic with training. Flying an aircraft—interpreting dials and adjusting controls—is skills-based. These behaviors are easiest to automate because they rely on tight feedback loops that can be represented mathematically.

Rule-based behaviors are actions that can be represented by subroutines, stored rules, or procedures. Following a checklist is rule-based. These are also good candidates for automation, but they are vulnerable to uncertainty: when the situation does not match the rule set, the system may fail.

Knowledge-based reasoning occurs when established rules do not match the current situation. Fast mental simulations may be required for resolution. The "miracle on the Hudson"—Captain Sully Sullenberger's decision to ditch US Airways Flight 1549 in the Hudson River rather than attempt to land at a nearby airport—is an example of knowledge-based reasoning. The situation was novel, uncertain, and time-critical. Sullenberger had to build a mental model of the environment and the state of the aircraft, simulate possible courses of action, and choose the least bad option. No automated or autonomous system could have done this.

Expert behaviors sit at the top of the cognitive continuum. Expertise leverages judgment and intuition—the ability to assess a situation quickly, recognize patterns, and make fast, frugal

decisions under extreme uncertainty. This is the hardest for computers to replicate.

The key insight from this framework is that AI excels in low-uncertainty environments where the world model can be built with high fidelity. Drones navigating pre-mapped airspace with GPS and radar are operating in low uncertainty. Driverless cars navigating city streets with unpredictable pedestrians, cyclists, and other drivers are operating in high uncertainty. The fog of war—the defining characteristic of armed conflict—is the highest-uncertainty environment imaginable.

Thus, as Cummings concludes, "while computers and AI can be superior to humans in some skill- and rule-based tasks, under situations that require judgment and knowledge, in the presence of significant uncertainty, humans are superior to computers." This conclusion has profound implications for the military applications of AI.

5.3.2 Current and Emerging Military Applications of AI

Despite these limitations, AI is already being integrated into military systems across multiple domains. Nazil (2025) provides a comprehensive overview of current and emerging applications, which can be grouped into five categories.

Autonomous Systems and Robotics. Unmanned aerial vehicles (UAVs) are the most visible military application of AI. While current UAVs are largely remotely piloted (teleoperated), AI enables autonomous functions: navigation, takeoff and landing, sensor management, and, in some systems, automated target detection and classification. The next generation of UAVs, currently in development, will incorporate greater autonomy, including "loyal wingman" systems that operate alongside manned fighter jets and "swarm" systems in which dozens or hundreds of small drones coordinate their behavior through AI.

Unmanned ground vehicles (UGVs) are also being developed for logistics, mine clearance, explosive ordnance disposal, and reconnaissance. The US Army's Robotic Combat Vehicle program aims to field UGVs that can operate in semi-autonomous modes, with human operators supervising rather than directly controlling. Unmanned surface vessels (USVs) and underwater vehicles (UUVs)

are being developed for mine countermeasures, anti-submarine warfare, and intelligence gathering.

Enhanced Data Analysis and Predictive Modeling. The volume of data generated by modern sensors—satellites, drones, ground stations, cyber monitoring—is far beyond human processing capacity. AI, particularly machine learning, is being used to fuse signals intelligence, geospatial intelligence, human intelligence, open-source intelligence, and other data streams into a common operating picture. The US Department of Defense's Project Maven, which uses AI to detect objects of interest in drone video, is a prominent example. Predictive analytics models are being developed to anticipate adversary intentions, forecast equipment failures (predictive maintenance), and optimize logistics.

Cybersecurity and Network Defense. AI is being used to detect anomalies in network traffic that might indicate a zero-day attack or advanced persistent threat, to automate incident response, and to hunt for hidden threats. The speed and scale of cyber operations—millions of events per second—require automated and AI-enabled defense.

Command and Control Integration. AI is being integrated into command and control systems to provide real-time situational awareness, decision support, and resource optimization. An AI system can process sensor data from all domains, build a common operating picture, evaluate possible courses of action against mission objectives and rules of engagement, and recommend optimal actions to human commanders. This augments rather than replaces human judgment.

Combat Operations Support. AI is being used to assist with target identification and acquisition. Computer vision algorithms can rapidly analyze imagery to detect and classify potential targets, reducing the risk of friendly fire and collateral damage. AI is also being integrated into loitering munitions (drones that wait over an area for a target to appear) and active protection systems (systems that automatically detect incoming threats and trigger countermeasures).

5.3.3 The Commercial-Military AI Gap and Its Implications

One of the most significant and underappreciated developments in

military AI is the shift in research and development spending from defense to commercial sectors. Cummings presents striking data: from 2014 to 2016, the aerospace and defense sector spent approximately 30 billion on R&D globally; the automotive sector spent approximately 90 billion; and the information and communication sector spent approximately $200 billion. Driverless car development, which originated with a DARPA program in 2004, has been commercialized at a pace that far exceeds military autonomous vehicle development. Companies like Google (now Alphabet), Amazon, Facebook, Tesla, and Uber are investing billions in AI research, attracting the best engineering talent, and driving innovation at a rate that defense contractors cannot match.

This gap has several implications. First, the expertise needed to develop safe, reliable, and secure AI systems is increasingly concentrated in the commercial sector. Defense companies struggle to compete for top talent. Second, commercial off-the-shelf AI systems may be adapted for military use, with or without government oversight. A drone delivery company's navigation software could be repurposed for a loitering munition. A facial recognition system could be used for target identification. Third, the spread of AI capabilities to non-state actors—including terrorist groups, insurgents, and criminal organizations—is accelerating. Commercial drones are widely available; adding autonomous capabilities requires only software.

The commercialization of AI thus complicates efforts to regulate military AI. Banning an autonomous technology for military use may be impractical if the same technology is widely available in the commercial sector. Moreover, the rapid development of commercial autonomous systems could normalize the acceptance of autonomous systems for the military and the public, reducing the stigma that currently attaches to autonomous weapons.

5.3.4 Lethal Autonomous Weapons Systems: The Ethical and Legal Challenge

The most controversial military application of AI is the lethal autonomous weapons system (LAWS)—a system that can select and engage targets without human intervention. Proponents argue that LAWS could reduce civilian casualties by operating more precisely and without the fear, anger, or fatigue that can impair human

judgment. They could also protect friendly forces by removing them from dangerous missions and reduce the tempo advantage of adversaries who might otherwise operate faster than humans can react.

Opponents raise profound ethical and legal objections. First, they argue that LAWS cannot comply with the principle of distinction. Distinction requires combatants to "at all times distinguish between the civilian population and combatants and between civilian objects and military objectives." Can an AI system reliably distinguish a civilian from a combatant in the chaos of battle? The answer, given current technology, is no. Computer vision algorithms can classify objects in controlled conditions with reasonable accuracy, but they fail unpredictably when presented with novel conditions, adversarial inputs, or ambiguous data. A LAWS that mistakenly targets a civilian is not merely an accident; it is a predictable failure mode of the technology.

Second, opponents argue that LAWS cannot assess proportionality. Proportionality requires an assessment of whether incidental loss of civilian life, injury to civilians, or damage to civilian objects would be excessive in relation to the concrete and direct military advantage anticipated. This assessment requires not only perception but also judgment—the ability to weigh competing values, to consider context, to exercise discretion. AI systems have no moral agency. They cannot "weigh" values. They can only optimize against the metrics they are given. And metrics always underdetermine the full range of morally relevant considerations.

Third, opponents argue that LAWS create an accountability gap. If a LAWS commits a war crime, who is responsible? The commander who deployed it? The programmer who wrote its algorithms? The manufacturer? The system itself? Under current international criminal law, only natural persons can be held responsible. But it may be impossible to trace a specific violation to a specific human decision. The system's behavior emerged from the interaction of its algorithms, its training data, and its environment—none of which any single person fully controlled.

Fourth, opponents argue that LAWS lower the threshold for war. If a state can fight without risking its own soldiers, it may be more willing to resort to force. The human costs of war—the dead, the wounded, the traumatized—have been a powerful constraint on the decision to go to war. Removing that constraint could make war

more frequent.

The ICRC has taken a cautious position. It has not called for a ban on all autonomous weapons. But it has called for new international rules to ensure that autonomous weapons remain under human control. Specifically, the ICRC has argued that (1) the use of autonomous weapons must comply with IHL; (2) autonomous weapons must be designed to allow human operators to understand their behavior and predict their effects; (3) human operators must exercise meaningful control over the use of force, including the ability to intervene and deactivate the system; and (4) accountability for violations must be maintained.

States are divided. At the UN Convention on Certain Conventional Weapons (CCW) Group of Governmental Experts on LAWS, a majority of states have called for new international rules, but the major military powers—the United States, Russia, China, and others—have resisted a binding instrument, preferring non-binding guidelines or no regulation at all. The debate is ongoing, and the window for preventive regulation is narrowing.

5.3.5 The US Department of Defense AI Ethical Principles

In response to these challenges, the US Department of Defense has adopted five ethical principles for the development and deployment of AI in military systems. These principles, announced in 2020, are:

Responsible. Personnel who design, develop, and deploy AI systems will exercise appropriate levels of judgment and care. This means that human operators will remain responsible for the actions of AI systems under their control.

Equitable. The Department will take deliberate steps to minimize unintended bias in AI systems. AI systems that produce discriminatory outcomes—whether by targeting certain populations or denying them resources—are unacceptable.

Traceable. The Department will develop AI systems that are transparent and auditable. This includes the ability to understand the data and algorithms that produced a particular outcome, and to reconstruct the decision-making process.

Reliable. The Department will develop AI systems that are safe, secure, and effective. This includes rigorous testing and validation, including for adversary attempts to manipulate or deceive AI systems.

Governable. The Department will develop AI systems that

retain the ability to detect and avoid unintended consequences, and that can be deactivated or disengaged if they exhibit unexpected behavior.

These principles are a step forward. But they are principles, not binding rules. They do not specify the technical standards that would be required to verify compliance. They do not address the hard questions of accountability when AI systems fail. And they are unilateral; they do not provide a framework for international cooperation or arms control.

5.4 Convergence and Synthesis: The Erosion of Distinction in Digital Warfare

5.4.1 The Combatant-Civilian Distinction Under Digital Pressure

The principle of distinction is the cornerstone of IHL. It requires belligerents to distinguish between combatants and civilians, and between military objectives and civilian objects. The digital transformation of armed conflict is eroding this distinction from two directions.

First, civilians are increasingly participating in hostilities through cyber operations. They do not wear uniforms. They do not carry arms openly. They operate from civilian infrastructure, often in countries far from the battlefield. Yet their operations can have military effects. This creates an identification problem for adverse parties: how can they determine who is a civilian hacker entitled to protection and who is a combatant or civilian directly participating in hostilities? And it creates a targeting problem: if a civilian hacker is conducting a cyber operation from a residential apartment building, is it lawful to attack that building? The principle of proportionality would require an assessment of incidental harm to other civilians in the building—harm that could be substantial.

Second, AI systems are blurring the distinction between combatants and civilians in a different way. An autonomous drone is not a combatant; it is a weapon system. But the operator who supervises it, or the programmer who designed its algorithms, or the commander who deployed it, may be far from the battlefield. The chain of causation from decision to effect is longer and more

diffuse. This makes it harder to apply the principle of distinction: who is the "combatant" directing the attack? And it makes accountability harder: if the drone mistakenly targets a civilian, who is responsible?

5.4.2 The Proportionality and Precaution Challenges

Proportionality and precaution are also challenged by digital warfare. Proportionality requires an assessment of whether incidental harm to civilians or civilian objects would be excessive in relation to the concrete and direct military advantage anticipated. This assessment depends on accurate information about the target, the likely effects of the attack, and the presence of civilians. In cyber operations, these assessments are particularly difficult. The effects of a cyber attack can be indirect, cascading, and difficult to predict. A cyber attack on a military communications network might also disable a civilian hospital that shares the same infrastructure. A cyber attack on an electrical grid might cause a cascade of failures affecting water supply, transportation, and emergency services. Assessing proportionality in such cases requires modeling complex systems, anticipating second- and third-order effects, and making judgments under uncertainty—precisely the kinds of reasoning at which AI systems currently struggle and at which humans are superior.

Precaution requires belligerents to do everything feasible to verify that the target is a military objective, to choose means and methods that minimize incidental harm, and to cancel or suspend an attack if it becomes apparent that the target is not military or that the incidental harm would be excessive. In cyber operations, feasibility may be limited by the difficulty of verifying the nature of a digital target. A computer server could be used for military command and control, but also for civilian functions. A network could be owned by a military entity, but also carry civilian traffic. Hackers may not have the access or information required to make these distinctions. Yet ignorance is not an excuse. If a hacker cannot verify that a target is military, they cannot lawfully attack it.

5.4.3 The Accountability Gap

The digital transformation of armed conflict is creating an accountability gap. Traditional IHL assigns responsibility to states

and individuals. States are responsible for the conduct of their armed forces and for persons acting on their instructions or under their direction or control. Individuals are responsible for their own acts and, under command responsibility, for the acts of subordinates under their effective control.

Civilian hackers who operate independently of state direction are difficult to hold accountable under international law. They are not state agents. Their conduct cannot be attributed to a state unless the state exercised overall control. They may not be subject to any state's jurisdiction if they operate from a territory whose government is unwilling or unable to prosecute them. And they may be difficult to identify and locate, operating behind layers of encryption and anonymization.

Autonomous weapons systems create a different accountability gap. If a LAWS commits a war crime, who is responsible? The commander who deployed the system may not have intended or foreseen the specific violation. The programmer who wrote the algorithms could not have anticipated every possible scenario. The manufacturer designed the system but did not operate it. International criminal law currently has no concept of corporate criminal responsibility for war crimes. And the system itself cannot be prosecuted.

Closing these gaps will require new legal frameworks. For civilian hackers, this might include strengthened domestic legislation criminalizing cyber operations that violate IHL, enhanced international cooperation for prosecution and extradition, and clearer rules on state responsibility for hackers operating from their territory. For autonomous weapons, this might include new treaty rules requiring meaningful human control over the use of force, mandatory human-in-the-loop or human-on-the-loop architectures for critical functions, and the criminalization of certain forms of autonomy that are inherently incapable of complying with IHL.

5.4.4 The Commercialization of Military Technology

The shift in AI expertise and R&D spending from defense to commercial sectors has implications that are only beginning to be understood. If the commercial sector is driving AI innovation, then the military applications of AI will be shaped by commercial

priorities, not by humanitarian concerns. Driverless car companies are optimizing for navigation in predictable environments, not for distinguishing combatants from civilians in urban warfare. Social media companies are optimizing for user engagement, not for compliance with IHL's prohibition on incitement to violence.

Moreover, the commercialization of AI creates proliferation risks. Commercial off-the-shelf AI systems can be adapted for military use by states and non-state actors alike. A drone delivery company's navigation software could be used by a terrorist group to guide a weaponized drone. A facial recognition system could be used by an authoritarian regime to identify and target dissidents. The barriers to acquiring autonomous capabilities are falling, and they will continue to fall.

This suggests that the debate over regulating autonomous weapons cannot be limited to military systems. It must also consider the civilian technologies from which military systems are derived. Export controls on autonomous drone technology, for example, could help prevent proliferation. International standards for the safety and security of autonomous systems could be adapted to require compliance with IHL. And public awareness campaigns could educate software engineers and tech companies about the potential military applications of their work and their legal and ethical responsibilities.

5.5 The Way Forward: Governing Digital Warfare

5.5.1 The Need for Clarification, Not Just Codification

One response to the challenges posed by digital warfare is to call for new treaties. And indeed, there are areas where new treaty rules may be needed, particularly on LAWS. But the more urgent need is for clarification of how existing IHL rules apply to digital operations. The eight rules articulated by the ICRC for civilian hackers are a model: they do not create new law, but they restate existing law in a form that is accessible and applicable to new actors and new contexts.

The same approach could be extended to other digital

challenges. An international manual on the application of IHL to cyber operations, analogous to the San Remo Manual on naval warfare, could provide authoritative guidance on questions such as when a cyber operation constitutes an attack, how to assess proportionality in cyber operations, and what precautions are feasible in the digital domain. The Tallinn Manual 2.0, produced by experts under the auspices of NATO's Cooperative Cyber Defence Centre of Excellence, is a step in this direction, but it is a non-binding expert product, not an authoritative statement by states.

States could also issue unilateral interpretative statements or adopt joint declarations clarifying their understanding of how IHL applies to digital operations. Such statements would not be binding, but they could influence state practice and contribute to the formation of customary international law.

5.5.2 Strengthening International Institutions and Mechanisms

The effective regulation of digital warfare requires international institutions with the capacity to monitor compliance, investigate violations, and attribute responsibility. The UN Group of Governmental Experts on cyber issues has made progress on norms of responsible state behavior, but it lacks investigative capacity. The International Criminal Court has announced its intention to collect evidence of cyber war crimes, but its jurisdiction is limited to states parties to the Rome Statute, and it faces significant evidentiary challenges.

One possibility is to strengthen the mandate and resources of the International Humanitarian Fact-Finding Commission (IHFFC), a standing body established by Additional Protocol I that has never been used. The Commission could be empowered to investigate cyber operations and autonomous weapons incidents. Another possibility is to establish a new mechanism, perhaps under UN auspices, to provide technical assistance to states investigating digital violations, to develop forensic standards for cyber attribution, and to facilitate information sharing among states.

5.5.3 The Role of Non-State Actors: Tech Companies and Civil Society

States are not the only actors with a role to play in governing digital warfare. Tech companies that develop and deploy AI systems have a responsibility to ensure that their technologies are not used to violate IHL. This includes conducting human rights due diligence, implementing safeguards to prevent misuse, and cooperating with international investigations.

Civil society organizations, including human rights groups, humanitarian organizations, and academic institutions, have a role in monitoring, documenting, and advocating for compliance with IHL. The ICRC, with its unique mandate as guardian of IHL, has already taken a leading role in articulating rules for civilian hackers and engaging with tech companies. Other organizations, such as Amnesty International and Human Rights Watch, have documented cyber operations that violate IHL and called for accountability.

5.5.4 The Imperative of Human Control

The common thread running through the analysis of both civilian hackers and autonomous weapons is the imperative of human control. IHL was designed for a world in which humans make decisions about the use of force. It assumes that those decisions can be attributed to identifiable persons, that those persons can be held accountable, and that those persons have the capacity to distinguish between combatants and civilians, to assess proportionality, and to take precautions.

When those assumptions break down—when decisions are made by algorithms, when accountability cannot be assigned, when distinction and proportionality cannot be assessed—the law fails. The challenge of digital warfare is to ensure that human control is maintained, not as a matter of technical possibility but as a matter of legal requirement. This means, at a minimum, that the critical functions of warfare—target identification, attack authorization, proportionality assessment—must be performed by humans. It means that autonomous systems must be designed to allow meaningful human intervention. And it means that civilian hackers who conduct cyber operations in armed conflicts must be aware that they are bound by IHL and may be prosecuted for violations.

5.6 Conclusion: The Limits of Law in the Age of Algorithms

This chapter has examined two intersecting dimensions of the digital transformation of armed conflict: the involvement of civilian hackers in cyber operations and the integration of artificial intelligence into military systems. Both developments challenge fundamental assumptions of IHL. Both create risks of increased civilian harm, accountability gaps, and erosion of the distinction between combatants and civilians. And both are unfolding rapidly, driven by technological advances that show no sign of slowing.

Yet the conclusion is not that IHL is obsolete. The principles of distinction, proportionality, precaution, and humane treatment remain as morally compelling and operationally necessary as ever. The challenge is to apply them to new technologies and new actors—to interpret them, clarify them, and, where necessary, extend them.

This requires a multi-pronged strategy. At the international level, states must continue the dialogue on LAWS and cyber operations, working toward binding rules where possible and authoritative guidance where not. At the national level, states must adopt domestic legislation criminalizing cyber war crimes, strengthen oversight of military AI programs, and invest in testing and validation to ensure that autonomous systems comply with IHL. At the industry level, tech companies must develop and implement safeguards to prevent misuse of their technologies, and must cooperate with international efforts to attribute and prosecute violations. And at the individual level, civilian hackers and AI engineers must be educated about their legal and ethical responsibilities, and must be held accountable when they cross the line.

The digital transformation of armed conflict is not a distant prospect. It is already happening. The question is not whether IHL will adapt, but how—and whether the adaptation will occur in time to prevent the worst harms. The history of IHL is a history of belated responses: the 1868 St. Petersburg Declaration came after the invention of explosive bullets; the 1949 Geneva Conventions came after the Holocaust; the 1977 Additional Protocols came after the Vietnam War. We have an opportunity now to anticipate the harms of digital warfare and to regulate them before they become entrenched. Whether we will seize that opportunity is a question not of technological capacity but of political will. The law can only do so much. The rest is up to us.

Chapter 6: The Unfinished Revolution – Martens Clause, Indigenous Wisdom, and the Quest for a Humane Future in International Humanitarian Law

6.1 Introduction: Beyond Positivism in a Fractured World

The preceding five chapters have traced the arc of international humanitarian law from its foundational principles and historical development to the contested terrain of contemporary armed conflict. We have examined the ambiguity of hybrid actors such as maritime militias, the cascading health crises and displacement strategies in Sudan, Syria, and Colombia, the politics of casualty counting and the weaponization of numbers, the revisionist challenge to the moral equality of combatants, and the disruptive emergence of civilian hackers and autonomous weapons systems. Throughout this journey, a recurring diagnosis has surfaced: the crisis of IHL is not primarily a crisis of rules but a crisis of compliance, of moral motivation, and of epistemological legitimacy.

The positivist edifice of modern IHL, built upon the twin pillars of state consent and codified prohibitions, has reached a saturation point. As the 2022 editorial of the *International Review of the Red Cross* observed, the proliferation of non-binding instruments and soft law has created a condition of "normative indeterminacy" rather than normative strength. When everything is guidance and nothing is binding, when states can "contract out" of customary norms, the law loses its authority. This chapter argues that the path forward requires not merely more treaties, but a fundamental reorientation of the moral foundations upon which IHL rests. It proposes that three underutilized resources—the Martens Clause, the Minahasan philosophy of *Sitou Timou Tumou Tou* (STTT), and the Turku Declaration of Minimum Humanitarian Standards—offer a complementary framework capable of rescuing IHL from its current paralysis.

The argument proceeds in four parts. First, we revisit the

Martens Clause, tracing its evolution from a diplomatic compromise to a potential bridge between positive law and natural law, between state consent and the dictates of public conscience. Drawing on Ticehurst's analysis and the dissenting opinions in the *Nuclear Weapons* case, we argue that the Clause is not merely a reminder of custom but a normative injunction in its own right. Second, we introduce STTT as a concrete articulation of the "principles of humanity" that the Martens Clause invokes. Developed by the Indonesian intellectual Dr. Sam Ratulangi, the axiom "Sitou Timou Tumou Tou"—"humans live to humanize others"—offers a relational ontology that transforms the ethics of restraint into an ethics of identity. Third, we examine the Turku Declaration (1990) as an effort to operationalize minimum humanitarian standards applicable in all situations, including internal violence and public emergency, thereby filling the gap between IHL and human rights law. Finally, we synthesize these elements into a coherent vision for the future development of IHL, one that integrates Global South epistemologies, strengthens the normative force of the Martens Clause, and provides a credible response to the digital and autonomous challenges analyzed in Chapter 5.

6.2 The Martens Clause: From Rhetorical Ornament to Normative Power

6.2.1 The Origins and Enduring Relevance

The Martens Clause first appeared in the preamble to the 1899 Hague Convention (II) with Respect to the Laws and Customs of War on Land. Its drafter, the Russian delegate Fyodor Martens, introduced it to resolve a deadlock over the status of civilians who take up arms against an occupying force—the *francs-tireurs* problem. Large military powers argued that such civilians should be treated as unlawful combatants subject to execution; smaller states insisted they should be accorded the protections of lawful combatants. Unable to agree on a specific rule, the conference adopted a clause that declared: "Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the

principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience."

As Ticehurst notes in his authoritative study, the Clause has subsequently reappeared in various forms in the 1949 Geneva Conventions, the 1977 Additional Protocols, and other treaties. Its migration from the preamble of the 1899 Convention to Article 1(2) of Additional Protocol I was a deliberate act by the 1977 Diplomatic Conference to underline its substantive, not merely aspirational, character. Yet despite this textual prominence, the Clause has been relegated to the margins of legal practice, invoked in scholarly footnotes but rarely given dispositive weight in judicial decisions.

6.2.2 The Interpretive Divide: Positivist Narrowness versus Natural Law Expansiveness

The ICJ's 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons provided a rare occasion for sustained engagement with the Martens Clause. The Court noted that the Clause "has proved to be an effective means of addressing the rapid evolution of military technology"—a characteristically Delphic statement that left the Clause's meaning unresolved. However, the dissenting opinions and state submissions revealed the deep fault lines in interpretation.

At the narrow end, the United Kingdom and other nuclear-armed states argued that the Clause merely reminds states of the continued applicability of customary international law not codified in treaties. In this view, the Clause adds nothing to the existing sources of international law; it is a truism, not a norm. The Russian Federation went further, contending that because a "complete code" of the laws of war was formulated in 1949 and 1977, the Clause is now redundant. Both positions reflect a positivist commitment: law is what states have consented to, and nothing more.

At the expansive end, Nauru and other non-nuclear states argued that the Clause authorizes the Court to look beyond treaties and custom to the "laws of humanity" and the "dictates of the public conscience." In its submission, Australia urged that the question is not whether the use of nuclear weapons is prohibited by a specific treaty, but whether it is "per se inconsistent with the general principles of humanity." Japan similarly argued that nuclear

weapons are “clearly contrary to the spirit of humanity that gives international law its philosophical foundation.” Judge Shahabuddeen, in a powerful dissent, insisted that if the Clause merely reminds states of norms existing outside it, “it is difficult to see what norm of State conduct it lays down.” He concluded that the Clause has independent normative status, deriving from three sources: established custom, the laws (or principles) of humanity, and the dictates of public conscience.

6.2.3 The Clause as an Ontological Bridge

The positivist-naturalist divide that Ticehurst identifies is not merely academic. It has practical consequences. If the Clause is only a reminder of custom, then powerful states can contract out of emerging norms, as the United States argued in the *Nuclear Weapons* proceedings: “customs could not be created over the objection of the nuclear States whose interests are most affected.” This logic immunizes the most powerful actors from legal change. It also renders the “dictates of public conscience” an empty vessel, because the public conscience is defined only by the practice of states—a circularity that negates the Clause’s purpose.

Ticehurst’s conclusion is therefore crucial: the Martens Clause establishes an objective means of determining natural law through the “dictates of public conscience.” This permits the participation of all states, and indeed of civil society, in the development of IHL. UN General Assembly resolutions, even those not adopted by consensus, provide evidence of the public conscience. The judgments of international criminal tribunals, the reports of human rights organizations, and the declarations of professional associations (such as the 1989 IALANA Declaration on the Illegality of Nuclear Weapons) can all inform the content of the Clause. In an era where the formal treaty-making system is gridlocked, the Martens Clause offers a path to normative innovation that bypasses the veto of the few.

Yet Ticehurst acknowledges a weakness: the Clause remains vague. “Public conscience” is an abstraction; “laws of humanity” requires concretization. This is where indigenous philosophies like *Sitou Timou Tumou Tou* enter the frame.

6.3 *Sitou Timou Tumou Tou*: The Ontology of

Reciprocal Existence

6.3.1 Sam Ratulangi's Philosophical Formula

Dr. Gerungan Saul Samuel Jacob Ratulangi (1890–1949) was a Minahasan mathematician, educator, and national hero of Indonesia. Trained in mathematics in the Netherlands, he served as the first Governor of Sulawesi after Indonesian independence. His philosophical formulation, "*Sitou Timou Tumou Tou*," is often translated as "Man lives to humanize others." But as Saragih's recent exegesis demonstrates, the phrase repays closer analysis.

Etymologically, it breaks into four elements: *Si Tou* (the human as a biological subject), *Timou* (the state of living or existing), *Tumou* (the active verb of cultivating, nurturing, or humanizing), and *Tou* (the human as a realized, complete entity). The conventional translation captures the ethical command but misses the metaphysical necessity. Ratulangi was proposing a logical condition for existence: biological life (*Timou*) is insufficient for humanity. A person exists biologically by birth, but they exist existentially only through the transitive act of *Tumou*. Therefore, the Self is not a pre-existing entity that enters into relationships; rather, the Self is created by those relationships. Isolation is the antithesis of humanity.

Saragih suggests a mathematical interpretation: if we treat the individual as variable X and the other as variable Y, Western individualism might see society as $X + Y$. But STTT implies the formula $X \bullet Y$ (multiplication). If the value of Y (the other) is reduced to zero (dehumanized), the value of X (the self) also becomes zero, regardless of how large X imagines itself to be. This is not poetry but a rigorous claim about existential interdependence.

6.3.2 Contrasting STTT with Hobbes and the Ethics of Restraint

Western political realism, from Hobbes to contemporary strategic studies, begins from the assumption that conflict is the default

setting of human interaction. *Homo homini lupus*—man is a wolf to man. Law is a leash imposed from above to restrain inherent savagery. IHL, in this tradition, is a set of external constraints on a fundamentally adversarial relationship. The soldier is told: "Kill the enemy, but do not torture him." This creates cognitive dissonance and breeds the very dehumanization that the law seeks to prevent.

STTT offers a diametrical counter-narrative. It posits that the default setting of humanity is not predation but cultivation. One's survival is not secured by destroying the competitor but by elevating them. Domination is a form of self-erasure: by destroying the Other, the Self destroys the mirror needed to reflect its own humanity. This moves beyond the Golden Rule ("do unto others as you would have them do unto you"), which remains transactional. STTT is transformational: "I must make you human so that I can be human."

Applied to armed conflict, the implications are radical. The duty to *Tumou* implies that a soldier's obligation to an enemy prisoner is not merely to refrain from harm (a negative obligation), but to actively acknowledge their dignity (a positive obligation). The soldier who tortures may physically survive, but they return home spiritually hollowed out because they have ceased to function as *Si Tou*. This aligns with modern psychological research on "moral injury"—the trauma that soldiers suffer not from what is done to them, but from what they do to others.

6.3.3 STTT as Filling the Martens Clause

The Martens Clause invokes the "principles of humanity" and the "dictates of public conscience." But what are these principles concretely? STTT provides an answer: the principle of humanity is that the humanization of the Other is the condition for the existence of the Self. This is not a Western individualistic right but a relational imperative. It is a principle that can be recognized across cultures—compare the African concept of Ubuntu ("I am because we are") and the Confucian virtue of *ren* (benevolence as the foundation of humanity).

By adopting STTT as an interpretive lens for the Martens Clause, IHL gains a thick moral vocabulary. The proportionality test, for example, is usually framed as a utilitarian calculation: are the incidental civilian deaths excessive in relation to the military

advantage? STTT forces a different question: does this military operation completely negate the possibility of future reconciliation? If the operation creates generational hatred, if it dehumanizes the adversary to the point that post-conflict coexistence becomes impossible, then it cannot be justified even if the arithmetic of proportionality suggests otherwise. This introduces a long-term temporal dimension into the proportionality assessment, one that is currently absent from IHL doctrine.

Moreover, STTT challenges the doctrine of reciprocity. Under traditional IHL, if Side A violates the Geneva Conventions, Side B often feels released from its obligations. STTT severs this link: my obligation to treat the enemy humanely is not contingent on the enemy's behavior. Because my humanity is validated only by my act of humanizing, I must treat even a barbaric enemy with dignity—not for their sake, but to prevent my own descent into nothingness. This creates a "firewall" against the downward spiral of retaliation.

Saragih notes that STTT should not be seen as a replacement for IHL's rules but as their existential foundation. It addresses the "compliance gap" by shifting the source of obligation from external authority to internal necessity. The soldier protects the enemy not because the Geneva Convention says so, but because failing to do so would destroy the soldier's own humanity. This is a more robust psychological barrier than the threat of prosecution, which in the fog of war may seem distant and improbable.

6.4 The Turku Declaration: Minimum Humanitarian Standards for All Situations

6.4.1 The Gap Between IHL and Human Rights

One of the persistent structural weaknesses of the international protection system is the gap between IHL, which applies only in armed conflict, and human rights law, which applies at all times but permits derogations in public emergencies. Below the threshold of armed conflict—in situations of "internal violence, disturbances, tensions and public emergency"—neither body of law provides adequate protection. This is the "Meron gap," named after Theodor Meron who identified it in the 1980s.

The Turku Declaration of Minimum Humanitarian Standards

(1990) was an attempt by a group of experts convened by the Institute for Human Rights at Åbo Akademi University in Turku, Finland, to fill this gap. Its preamble recalls that "in cases not covered by human rights and humanitarian instruments, all persons and groups remain under the protection of the principles of international law derived from established custom, from the principles of humanity and the dictates of public conscience"—a direct echo of the Martens Clause. The Declaration proclaims standards that "are applicable in all situations, including internal violence, disturbances, tensions, and public emergency, and which cannot be derogated from under any circumstances."

6.4.2 Core Provisions and Their Relevance

The Turku Declaration consists of eighteen articles. Article 3 prohibits violence to life and health, murder, torture, mutilation, rape, collective punishments, hostage-taking, enforced disappearance, pillage, deliberate deprivation of access to food, water, and medicine, and threats or incitement to commit such acts. Article 4 guarantees rights for detainees: recognized places of detention, prompt information to families, communication with the outside world, habeas corpus, and humane conditions. Article 5 prohibits attacks against persons not taking part in acts of violence and requires proportionality in the use of force; it also declares that "[w]eapons or other material or methods prohibited in international armed conflicts must not be employed in any circumstances" (emphasis added). This is a crucial provision: it extends the weapon-specific prohibitions of IHL (chemical weapons, expanding bullets, blinding lasers, anti-personnel mines, cluster munitions) to all situations of violence, even those below the threshold of armed conflict.

Article 7 addresses displacement, requiring that it be ordered only for safety or imperative security reasons, and that displaced persons be allowed to return as soon as conditions permit. Article 8 reiterates the right to life and imposes a six-month moratorium on executions after a death sentence. Article 9 provides detailed judicial guarantees, including presumption of innocence, right to be tried in one's presence, prohibition of double jeopardy, and non-retroactivity. Article 10 prohibits the recruitment of children under fifteen into armed forces or groups and urges that persons below

eighteen not be allowed to take part in acts of violence. Articles 12 through 14 protect the wounded and sick, medical and religious personnel, and humanitarian organizations.

The Turku Declaration never achieved formal adoption as a treaty. The ICRC and the UN Secretary-General expressed reservations, arguing that the 2005 ICRC Customary Law Study and existing human rights law had filled the gap. Yet Meron, in his retrospective reflections, maintains that the Declaration remains a valuable tool. As he notes, the ICRC Customary Law Study applies only to armed conflicts, not to situations of internal violence. The Human Rights Committee's General Comments have made it harder to resort to derogations, but derogations remain legally possible. The Turku Declaration provides a clear, concise, and authoritative statement of the minimum standards that should apply in all circumstances, regardless of whether a state of emergency has been declared.

6.4.3 Synergies with STTT and the Martens Clause

The Turku Declaration operationalizes the Martens Clause for the sub-threshold space. It gives concrete content to the "principles of humanity" by listing specific prohibited acts. And it creates a bridge between IHL and human rights law that is conceptually coherent and practically useful. When combined with STTT, the Declaration gains an additional layer of justification. The prohibition of torture and enforced disappearance is not merely a legal technicality; it is an ontological necessity. To torture is to dehumanize the Other, and to dehumanize the Other is to destroy the Self. The Turku Declaration's prohibition on collective punishment and hostage-taking is an application of the STTT principle that the value of each human life is non-fungible.

Moreover, the Declaration's Article 5(3) has profound implications for the debates analyzed in Chapter 5. If weapons prohibited in international armed conflicts cannot be used in any circumstances, then autonomous weapons systems that fail to comply with IHL in international conflicts are equally prohibited in counterterrorism operations, police actions, and internal disturbances. The creeping use of military-grade weapons in domestic policing—drones, autonomous sentries, cyber weapons—would be constrained by this rule. This aligns with the call by the

ICRC and others for “meaningful human control” over the use of force in all contexts.

The Turku Declaration has not been superseded. It remains a living document, cited by the International Criminal Tribunal for the former Yugoslavia and by UN special rapporteurs. In a world where the distinction between armed conflict and other situations of violence is increasingly blurred—where hybrid warfare, cyber operations, and counterterrorism campaigns operate in legal grey zones—the Declaration’s insistence on non-derogable minimum standards is more urgent than ever.

6.5 Synthesis: Toward a Relational, Decolonized, and Humane IHL

6.5.1 Integrating the Three Resources

The argument of this chapter has been that the future of IHL depends on retrieving and operationalizing resources that have been marginalized by positivist orthodoxy. The Martens Clause provides the legal architecture for looking beyond treaties and custom to the “principles of humanity” and “dictates of public conscience.” STTT provides a concrete, culturally grounded articulation of what those principles mean: the recognition that the humanization of the Other is the condition for the existence of the Self. The Turku Declaration provides a detailed catalog of minimum standards applicable in all situations, serving as a bridge between IHL and human rights law.

These three resources are mutually reinforcing. The Martens Clause without content is an empty vessel; STTT gives it content. STTT without legal form is a noble sentiment; the Turku Declaration gives it legal form. The Turku Declaration without philosophical foundation is a checklist; STTT provides the existential justification for compliance. Together, they offer a way out of the “compliance gap” identified throughout this book.

6.5.2 Addressing the Challenges of Chapters 2 Through 5

How would this integrated framework respond to the specific

challenges analyzed in earlier chapters?

Hybrid Actors and Maritime Militias (Chapter 3): The Martens Clause, interpreted through STTT, would require that even when states deploy civilian fishermen for paramilitary tasks, the "principles of humanity" demand that such persons not be treated as mere instruments. Their status should be determined by a functional analysis that respects their dual nature. The Turku Declaration's Article 5 would prohibit the use of weapons against fishing vessels if those weapons are prohibited in international armed conflicts.

Public Health and Displacement (Chapter 4): The deliberate starvation of civilians, the bombing of hospitals, and the destruction of water infrastructure—all documented in Sudan, Syria, and Colombia—are clearly prohibited by the Turku Declaration's Article 3(f) (deliberate deprivation of access to necessary food, drinking water, and medicine) and Article 12 (protection of the wounded and sick). STTT adds that such acts are not merely illegal; they are self-destructive. The regime that starves its own population negates its own legitimacy and, in the long term, its survival.

War Counting and the Politics of Numbers (Chapter 3): The reduction of human lives to statistics is the very opposite of *Tumou*. The Martens Clause's invocation of the "public conscience" implies that the public has a right to accurate information about casualties. Manipulating casualty counts for propaganda purposes is a violation of the "dictates of public conscience" because it prevents the moral reckoning that is necessary for post-conflict reconciliation.

Moral Equality of Combatants (Chapter 3): The revisionist critique of McMahan—that unjust combatants are not morally equal to just combatants—finds a partial answer in STTT. Even if an unjust combatant is not justified in fighting, they remain a human being whose humanity must be recognized. The *Tumou* duty is not contingent on the justice of the cause. This preserves the non-reciprocity of IHL obligations while acknowledging the moral asymmetry that McMahan identifies.

Civilian Hackers and Autonomous Weapons (Chapter 5): The Turku Declaration's Article 5(3) prohibits the use of weapons prohibited in international armed conflicts in any circumstances. This would apply to cyber weapons that are indiscriminate by design (e.g., worms that spread automatically) and to autonomous weapons systems that cannot reliably distinguish civilians from

combatants. The Martens Clause, interpreted through STTT, would require that the "dictates of public conscience" be assessed by democratic and deliberative processes, not merely by the preferences of military powers. The rapid commercialization of AI and the shift of expertise from defense to commercial sectors (Cummings's analysis) makes this public accountability more urgent, not less.

6.5.3 Decolonizing International Humanitarian Law

A recurring theme throughout this book has been the Eurocentric origins of IHL. From the Hague Conventions to the Geneva Conventions, the law was shaped by European colonial powers with little input from the Global South. Even today, the major military powers—the permanent members of the UN Security Council—exercise disproportionate influence over the development and enforcement of IHL. The International Criminal Court, despite its universal aspirations, has been accused of bias, focusing disproportionately on African leaders.

The integration of STTT into IHL discourse is an act of "epistemological decolonization," as Saragih puts it. It asserts that the Global South is not merely a consumer of norms produced in Geneva and The Hague, but a producer of legal wisdom. Minahasan philosophy offers a relational ontology that challenges the hyper-individualism of Western liberalism. It does not reject universal human rights; it provides the ontological soil in which those rights can take root. As Saragih argues, STTT is not a replacement for the Geneva Conventions but a complement—a way of motivating compliance that speaks to cultural contexts where individual rights discourse may lack resonance.

This is not cultural relativism. STTT claims universal validity: the proposition that the Self is constituted through the recognition of the Other is not a parochial Minahasan belief but a philosophical truth that can be defended through reason and experience. It is no more "local" than the Hobbesian state of nature; both are philosophical constructs. The difference is that STTT has been empirically validated by survival in a region that experienced centuries of colonialism and conflict. It is a philosophy born of struggle, not of the seminar room.

6.5.4 The Role of the ICRC and Civil Society

The ICRC, as the "guardian of IHL," has a crucial role in advancing this agenda. Its Legal Division has already begun engaging with the Martens Clause and with non-Western legal traditions. Its *Interpretive Guidance on Direct Participation in Hostilities* and its *Commentaries* on the Geneva Conventions have set a high standard for rigorous, evidence-based interpretation. The next step would be to produce a study on the "principles of humanity" as understood across different cultures, featuring contributions from Minahasan, African, Indigenous, and Asian scholars. This would be a form of "bottom-up" IHL development that complements the top-down treaty process.

Civil society organizations, including the International Red Cross and Red Crescent Movement, human rights NGOs, and academic institutions, should advocate for the adoption of the Turku Declaration—not as a treaty, but as a statement of authoritative guidance that can be used in domestic legislation, military training, and judicial decisions. The Declaration's Article 5(3) on prohibited weapons should be particularly emphasized in the context of autonomous systems and cyber operations.

6.6 Conclusion: The Humanization of Warfare as an Unfinished Project

The title of this book has been *The Unfinished Business of International Humanitarian Law*. The phrase "unfinished business" captures both the achievements and the failures of the law. The achievements are real: the near-universal ratification of the Geneva Conventions, the establishment of the International Criminal Court, the development of customary IHL, the protection of millions of lives. The failures are equally real: the persistent violations, the impunity of the powerful, the suffering of civilians, the erosion of distinction, the weaponization of displacement, the dehumanization of the enemy.

The argument of this final chapter is that completing the unfinished business requires a moral revolution as much as a legal one. The positivist faith that more treaties and more courts will solve the problem has been tested and found wanting. What is needed is a deeper transformation in the way that soldiers,

policymakers, and citizens understand the relationship between the Self and the Other. The Martens Clause opens the door to this transformation by appealing to the "principles of humanity" and the "dictates of public conscience." The Turku Declaration provides a detailed map of the minimum standards that such a conscience requires. And *Sitou Timou Tumou Tou* gives a name and a logic to the humanity that we are called to realize: the humanity that lives only by humanizing others.

Sam Ratulangi's formula—$X \bullet Y$—is a warning and a promise. The warning is that when we dehumanize others, we dehumanize ourselves. The promise is that when we humanize others, we become fully human. In an age of autonomous weapons, cyber warfare, and globalized violence, this ancient wisdom is not a sentimental retreat from reality. It is the most realistic assessment we have of the conditions for our collective survival. The laws of war will not save us unless we first recognize that the enemy is not an alien species but a mirror. To attack the mirror is to shatter the image of our own face. To protect the mirror is to preserve the possibility of peace.

That is the unfinished business. And it is ours to finish.

6.7 Recapitulation: The Arc of the Argument

Before closing this book, it is worth pausing to retrace the intellectual journey we have undertaken together. The five preceding chapters have examined International Humanitarian Law from multiple angles—its foundations, its evolution, its contemporary contestations, its human costs, and its technological futures. Each chapter identified specific sites where the law is under pressure. Each chapter also revealed, often implicitly, a deeper crisis: the positivist architecture of IHL, for all its codificatory achievements, lacks the moral density to command adherence in the fog of war. What follows is a concise recapitulation of each chapter's core diagnosis, followed by an explanation of how *Sitou Timou Tumou Tou* (STTT) offers a remedy.

Chapter 1: Understanding IHL – Principles, Sources, and History established the foundational vocabulary of IHL: distinction, proportionality, precaution, military necessity, humanity, and the Martens Clause. It showed that while the law has evolved from the

1864 Geneva Convention to the 1977 Additional Protocols, its effectiveness depends on a precarious balance between legal positivism and natural law. The chapter identified the "compliance gap" as the central problem: states and combatants often treat IHL as a checklist of external constraints rather than an internalized moral code. STTT closes this gap by shifting the locus of obligation from external authority to existential necessity. Under STTT, compliance is not a burden imposed by Geneva but a condition for remaining human. The soldier who respects the enemy protects not only the enemy's dignity but also their own soul.

Chapter 2: How IHL Develops – Historical Trajectories and Institutional Forges traced the law's evolution from the Lieber Code through the Hague and Geneva Conventions to the ICRC Customary Law Study. It highlighted the shift from inter-state reciprocity to individual rights, from the *si omnes* clause to the non-derogable obligations of Common Article 3. Yet the chapter also documented a contemporary trend: the proliferation of non-binding "soft law" and the fragmentation of normative authority. When nothing is binding, the chapter asked, who knows what the law is? STTT provides an answer by grounding the Martens Clause's "dictates of public conscience" in a concrete, cross-culturally intelligible principle. The public conscience is not an abstraction; it is the recognition that my humanity depends on your humanity. This gives soft law a hard existential edge.

Chapter 3: The Unfinished Business of IHL – Hybrid Actors, War Counting, and Moral Equality examined four pressure points: maritime militias that blur the line between civilian and state actor; the health and displacement crises in Sudan, Colombia, and the Eastern Mediterranean; the sociology of casualty counting as narrative warfare; and McMahan's revisionist challenge to the moral equality of combatants. Each of these challenges exposes the inadequacy of binary categories (combatant/civilian, just/unjust, friend/foe). STTT dissolves these binaries through its logic of ontological interdependence. The maritime militia member is not a "hybrid" to be categorized but a *Tou* whose humanity must be recognized regardless of function. The casualty count is not a scoreboard but a measure of collective self-destruction. The unjust combatant, even if not justified, remains a human being whose humanization is necessary for the just combatant's own humanity.

Chapter 4: The Dispossessed – Refugees, IDPs, and the Long

Shadow of Armed Conflict documented the strategic use of displacement in Syria, the loneliness and excess mortality of refugees in Germany, and the systematic targeting of civilian infrastructure. It showed that displacement is not merely a consequence of war but a weapon of war—a form of demographic engineering designed to alter the political landscape permanently. STTT offers a direct refutation of this logic. Under the formula $X \bullet Y$, to displace a population is to diminish oneself. The regime that starves its own people, that destroys their homes and erases their identity, is not exercising power; it is committing existential suicide. The right of return is not merely a legal entitlement; it is a recognition that the refugee and the host are bound together in a relationship of mutual constitution. To welcome the displaced is to enact *Tumou*—to cultivate the humanity that makes peace possible.

Chapter 5: Digital Battlefields, Autonomous Weapons, and the Fragile Future of IHL analyzed the involvement of civilian hackers in cyber operations and the integration of artificial intelligence into military systems. It documented the shift in AI expertise from defense to commercial sectors, the ethical and legal challenges posed by lethal autonomous weapons systems (LAWS), and the erosion of the principle of distinction in the digital domain. STTT responds to these challenges by insisting on two non-negotiable requirements. First, meaningful human control over the use of force is not a technical preference but an ontological imperative. A machine cannot perform *Tumou* because it has no humanity to lose. Therefore, any weapon system that cannot be supervised by a human capable of moral reflection is inherently illegitimate. Second, the "dictates of public conscience" invoked by the Martens Clause must be interpreted through a global, democratically accountable process—not left to the military powers that possess the most advanced AI. STTT thus provides a philosophical foundation for the emerging norm that autonomous weapons must remain under "meaningful human control."

Chapter 6: The Unfinished Revolution – Martens Clause, Indigenous Wisdom, and the Quest for a Humane Future has argued that the resources for IHL's renewal already exist, buried but not lost. The Martens Clause, properly interpreted, is not a rhetorical ornament but a bridge between positive law and natural law, between state consent and the public conscience. The Turku

Declaration, though non-binding, provides a concrete catalog of minimum standards applicable in all situations of violence. And *Sitou Timou Tumou Tou* gives these standards a philosophical engine. Together, they offer a way out of the paralysis documented in the previous chapters.

The Cumulative Verdict: The crisis of IHL is not a crisis of rules. It is a crisis of moral motivation. The positivist experiment of the last century and a half—the attempt to regulate war through treaties, courts, and sanctions—has achieved much, but it has reached its limits. When the law is reduced to a set of external constraints, it will be violated whenever the perceived stakes are high enough and the likelihood of punishment low enough. The only way to close the compliance gap is to transform IHL from a law of restraint into a law of identity—from a set of prohibitions into a vision of what it means to be human. That is what STTT offers. It is not a replacement for the Geneva Conventions but their existential completion. It does not tell us what to do; it tells us who we are. And in answering that question, it makes the rules not easier to obey, but impossible to ignore.

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About the Author

Boydo Saragih is a final-year law student at the Faculty of Law, Universitas Sam Ratulangi (UNSRAT) in Manado, North Sulawesi, Indonesia, where he concentrates on criminal law and public international law.

In 2026, he published his first scholarly article, *"Humanizing Warfare: Sam Ratulangi's Minahasan Philosophy of Sitou Timou Tumou Tou and International Humanitarian Law,"* on the Social Science Research Network (SSRN), featured on the *Legal Theory Blog*. The article argues that the compliance crisis in international humanitarian law stems from its over-reliance on Western legal positivism. To fill this gap, it introduces the Minahasan philosophical axiom *Sitou Timou Tumou Tou* ("humans live to humanize others") as an ontological foundation for the Martens Clause, proposing an "ethics of identity" over the conventional "ethics of restraint."

Boydo has served as President of the *Verein der Verfahrensrecht* at the UNSRAT Faculty of Law, where he initiated a national legal competition on corruption and human trafficking in partnership with law enforcement agencies. He has also mentored university teams to success in several national moot court competitions and been invited as a guest lecturer on criminal procedure and narcotics investigation standards.

His writings on legal and social issues have appeared on *Kompasiana*, addressing topics such as civil-military relations, academic freedom, and human rights accountability. He holds certifications in paralegal studies, digital forensic investigation, climate change law, and anti-corruption advocacy. Boydo can be reached at boydosaragih071@student.unsrat.ac.id or via LinkedIn (Boydo Saragih).

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